

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

VOLUME II

10-23-63

B-E-7

1145 am

(2)

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS,
INTERNATIONAL LONGSHOREMEN'S ASSOCIA-
TION, AFL-CIO, INTERNATIONAL LONGSHORE-
MEN'S ASSOCIATION, AFL-CIO, AND C. B.
MORROW, B.A. OF LOCAL 1351, *Petitioners,*

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 17521

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

v.

HOUSTON MARITIME ASSOCIATION, INC., MASTER
STEVEDORES ASSOCIATION OF TEXAS AND THE
INDIVIDUAL RESPONDENT COMPANIES LISTED
ON APPENDIX A HEREIN, WHO ARE MEMBERS
OF THOSE ASSOCIATIONS, *Respondents.*

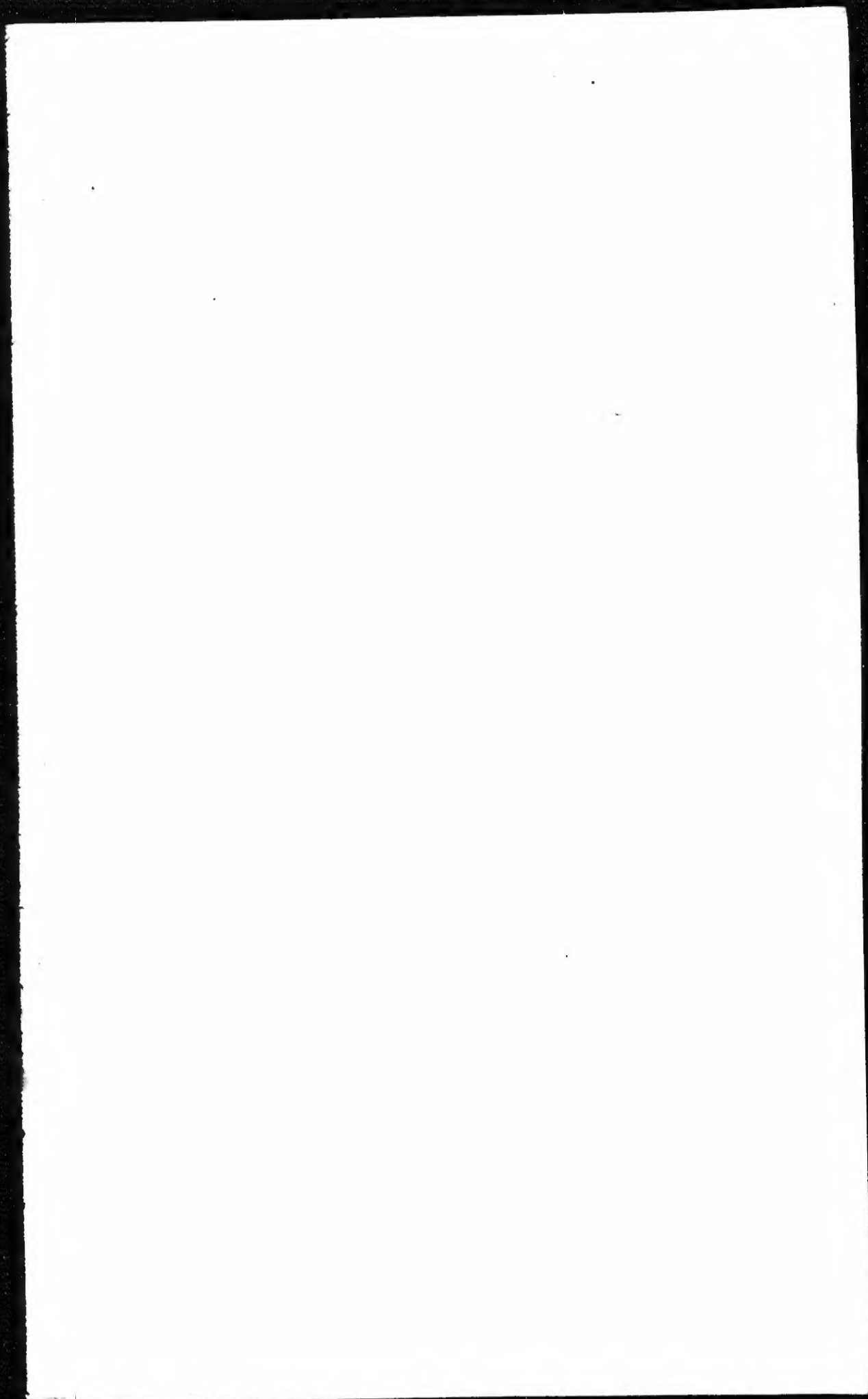
No. 17631

On Petition for the Review of an Order of the
National Labor Relations Board

United States Court of Appeals
for the District of Columbia Circuit

FILED SEP 9 1963

Nathan J. Paulson
CLERK



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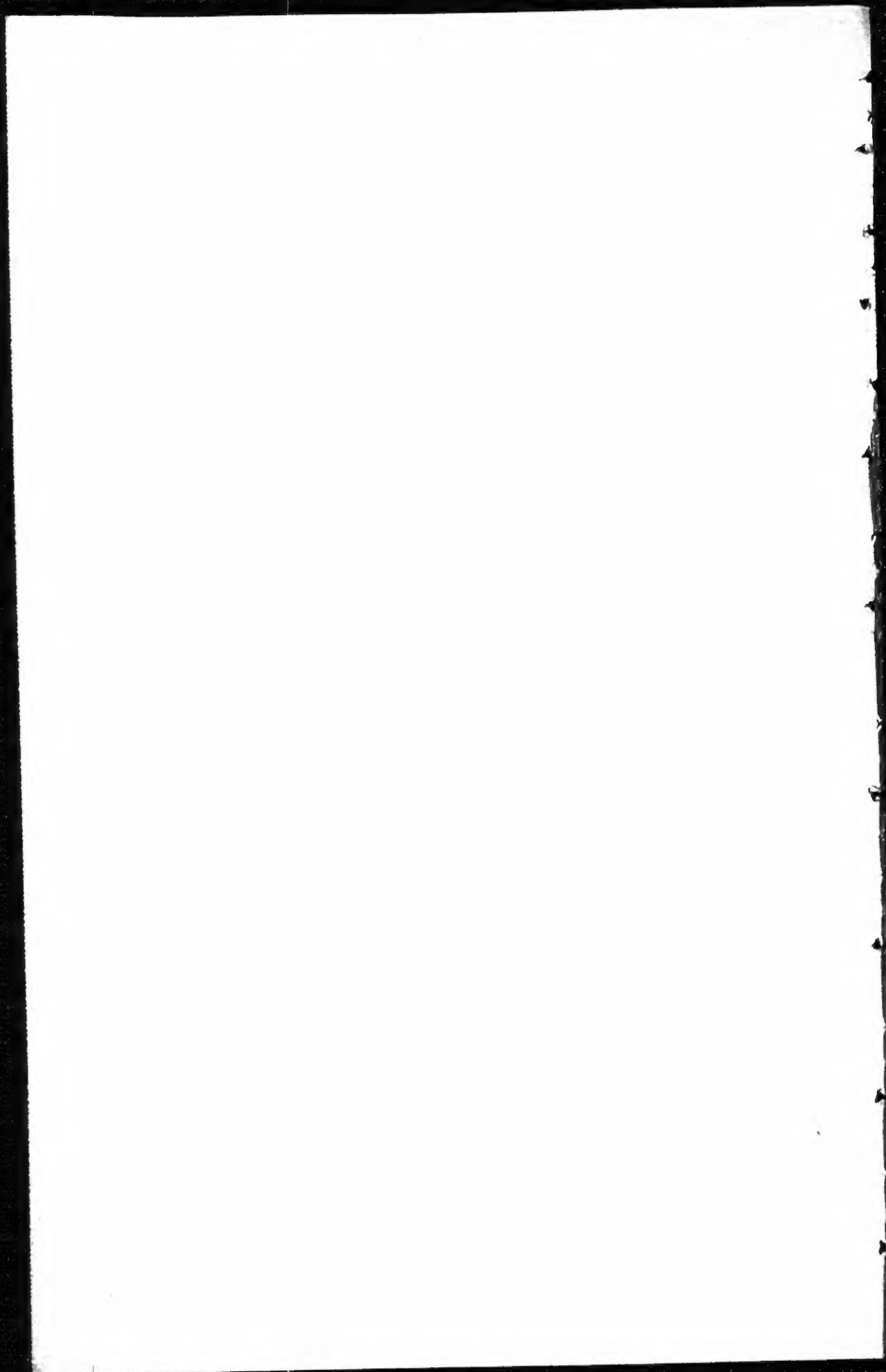
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**[1] BEFORE THE NATIONAL LABOR RELATIONS
BOARD
Sixteenth Region**

In the Matter of:

**GALVESTON MARITIME ASSOCIATION, INC.;
HOUSTON MARITIME ASSOCIATION, INC.;
MASTER STEVEDORES ASSOCIATION OF TEXAS
and Case No. 39-CA-482
H. H. FIELD, An Individual.**

— — —

**GALVESTON MARITIME ASSOCIATION, INC.;
HOUSTON MARITIME ASSOCIATION, INC.;
MASTER STEVEDORES ASSOCIATION OF TEXAS;
and the Individual Member Companies
listed in "APPENDIX A" attached to the
COMPLAINT;
and Case No. 39-CA-524
G. R. VINSON, An Individual.**

— — —

**LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
INDEPENDENT: C. B. MORROW, BUSINESS
AGENT; INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, LOCAL 1665, INDEPENDENT;
T. M. BENNETT, PRESIDENT; SOUTH ATLANTIC
AND GULF COAST DISTRICT, INTERNATIONAL
LONGSHOREMEN'S ASSOCIATION, INDEPENDENT;
RALPH MASSEY, PRESIDENT;
and Case No. 39-CB-90
H. H. FIELD, An Individual.**

— — —

LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS,
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
INDEPENDENT: C. B. MORROW, BUSINESS AGENT:
AVENUE N. CORPORATION; SOUTH ATLANTIC AND
GULF COAST DISTRICT, INTERNATIONAL LONG-
SHOREMEN'S ASSOCIATION, INDEPENDENT;
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
INDEPENDENT;

and Case No. 39-CB-124
G. R. VINSON, An Individual.

906 Federal Office Building,
Houston, Texas,
Wednesday, February 27, 1957.

Pursuant to notice, the above-entitled matter came on
for further hearing at 1:30 o'clock, p. m.

BEFORE:

ALBERT P. WHEATLEY, Esq.,
Trial Examiner.

APPEARANCES:

T. LOWRY WHITTAKER, Esq.,
650 M & M Building, Houston,
Texas, appearing as Counsel
for General Counsel.

ROBERT EIKEL, Esq.,
1910 Commerce Building,
Houston, Texas, appearing
on behalf of Houston Maritime
Association, Inc., Master

Stevedores Association of
Texas and Individual Member
Companies, Respondents.

ROYSTON & RAYZOR,
By: M. L. COOK, Esq.,
JAMES T. DOWD, Esq.
877 San Jacinto Building,
Houston, Texas, appearing
on behalf of the Galveston
Maritime Association, Inc.
and the Individual Member
Companies, Respondents.

SEWALL MYER, Esq.,
AL L. CRYSTAL, Esq.
421 Shell Building, Houston,
Texas, appearing on behalf
of Local 1351, Steamship
Clerks and Checkers, Inter-
national Longshoremen's
Association, Independent;
South Atlantic and Gulf
Coast District, International
Longshoremen's Association,
Independent; International
Longshoremen's Association,
Independent; Avenue N Corpora-
tion; C. B. Morrow, Business
Agent of Local 1351, Steamship
Clerks and Checkers, Inter-
national Longshoremen's
Association, Independent;

T. M. Bennett, President of
International Longshoremen's
Association, Local 1665,
Independent; and Ralph Massey,
President of South Atlantic
and Gulf Coast District,
International Longshoremen's
Association, Independent;
Respondents.

G. R. VINSON,
436 Westmoreland, Houston,
Texas, appearing as a
Charging Party.

H. H. FIELD,
1523 Suebarnett, Houston,
Texas, appearing as a
Charging Party.

[5]

PROCEEDINGS

* * * *

TRIAL EXAMINER WHEATLEY:

* * * *

[31]

(The documents heretofore marked General Counsel's Exhibits Nos. 1-A through 1-Z for identification were received in evidence.)

* * * *

(The document heretofore marked General Counsel's Exhibit No. 2 for identification was received in evidence.)

* * * *

[32]

(The documents heretofore marked General Counsel's Exhibits Nos. 3-A and 3-B for identification were received in evidence.)

* * * *

(The documents heretofore marked General Counsel's Exhibits Nos. 4-A through 4-Q for identification were received in evidence.)

* * * *

(The documents heretofore marked General Counsel's Exhibits Nos. 5-A through 5-C for identification were received in evidence.)

[146] MR. WHITTAKER:

Mr. Examiner, counsel for the General Counsel proposes the following stipulation, to-wit:

That the matters alleged in paragraphs 1, 2 and 3 of the complaint, General Counsel's Exhibit 1-A, are reasonably

accurate, and that the Board therefore has jurisdiction by virtue of the [147] companies being engaged in interstate commerce under one or more of its present standards.

Would you so stipulate, please, Mr. Eikel?

MR. EIKEL:

I will.

MR. WHITTAKER:

Mr. Crystal?

MR. CRYSTAL:

I cannot. I have no objection but I can't stipulate because I don't know anything about the facts.

TRIAL EXAMINER:

You don't take any position to the contrary?

MR. CRYSTAL:

No, sir.

TRIAL EXAMINER:

All right.

Now, wait a minute.

MR. WHITTAKER:

That is not sufficient.

TRIAL EXAMINER:

Wait just a minute, Mr. Whittaker.

MR. CRYSTAL:

I waive any objection.

TRIAL EXAMINER:

I was wondering more about something else. He's got here a combination case. He's got a case involving employers as well as unions. Is there going to be any —

MR. CRYSTAL:

He has some other paragraphs which we will stipulate that I think will be applicable as far as the unions are concerned.

TRIAL EXAMINER:

As I take it you are not raising and do not intend to raise any issue with respect to commerce?

MR. CRYSTAL:

No, sir.

TRIAL EXAMINER:

You are just saying you won't stipulate [148] the facts but you won't raise any issue on it.

MR. CRYSTAL:

That's correct.

TRIAL EXAMINER:

So if I make a finding of fact on it you will raise no issue on it.

MR. CRYSTAL:

That's correct.

accurate, and that the Board therefore has jurisdiction by virtue of the [147] companies being engaged in interstate commerce under one or more of its present standards.

Would you so stipulate, please, Mr. Eikel?

MR. EIKEL:

I will.

MR. WHITTAKER:

Mr. Crystal?

MR. CRYSTAL:

I cannot. I have no objection but I can't stipulate because I don't know anything about the facts.

TRIAL EXAMINER:

You don't take any position to the contrary?

MR. CRYSTAL:

No, sir.

TRIAL EXAMINER:

All right.

Now, wait a minute.

MR. WHITTAKER:

That is not sufficient.

TRIAL EXAMINER:

Wait just a minute, Mr. Whittaker.

MR. CRYSTAL:

I waive any objection.

TRIAL EXAMINER:

I was wondering more about something else. He's got here a combination case. He's got a case involving employers as well as unions. Is there going to be any —

MR. CRYSTAL:

He has some other paragraphs which we will stipulate that I think will be applicable as far as the unions are concerned.

TRIAL EXAMINER:

As I take it you are not raising and do not intend to raise any issue with respect to commerce?

MR. CRYSTAL:

No, sir.

TRIAL EXAMINER:

You are just saying you won't stipulate [148] the facts but you won't raise any issue on it.

MR. CRYSTAL:

That's correct.

TRIAL EXAMINER:

So if I make a finding of fact on it you will raise no issue on it.

MR. CRYSTAL:

That's correct.

TRIAL EXAMINER:

All right, Mr. Whittaker.

MR. WHITTAKER:

Well, I will so stipulate and I offer the stipulation as far as it goes.

TRIAL EXAMINER:

All right.

As I understand it, you have a stipulation between the General Counsel and the respondent employers. The respondent unions — and incidentally when I refer to the respondent unions it includes the individuals involved — will not join in the stipulation but they will not raise any issue with respect to the facts stipulated or any findings made based on those facts.

MR. CRYSTAL:

Correct.

MR. WHITTAKER:

Will he state that he will not raise it before the Board or the Circuit Courts or before the Supreme Court?

MR. CRYSTAL:

If I was going to raise it at all I would raise it here. I am not raising it here and don't intend to raise it any place else.

TRIAL EXAMINER:

He answered my question to that effect, he didn't propose to raise it at all.

MR. WHITTAKER:

May I propose a further stipulation to Mr. [149] Crystal?

TRIAL EXAMINER:

Certainly.

MR. WHITTAKER:

Mr. Crystal, I propose this stipulation so that the record may be absolutely clear.

It is stipulated by and between you, representing your respondents, and the counsel for the General Counsel, that as far as the interstate commerce data, jurisdiction of the Board is concerned, that you are not raising it as an issue here, you will not raise it as an issue before the Board, you will not raise it as an issue before the Circuit Court of Appeals and you will not raise it as an issue before the Supreme Court of the United States if the case should ever get that far?

MR. CRYSTAL:

I so stipulate.

MR. WHITTAKER:

Thank you.

I so stipulate and I offer it in evidence.

TRIAL EXAMINER:

You have a stipulation.

MR. WHITTAKER:

Off the record just briefly, please.

TRIAL EXAMINER:

Off the record.

(Discussion off the record.)

TRIAL EXAMINER:

On the record.

MR. WHITTAKER:

I propose the further stipulation, your Honor, that respondent Local 1351, respondent Local 1665, respondent ILA and respondent Gulf Coast District, are labor organizations within the meaning of Section 2, of subdivision 5 of the Act. Will you so stipulate, Mr. Crystal?

【150】 MR. CRYSTAL:

I so stipulate.

MR. WHITTAKER:

Will you so stipulate, Mr. Eikel?

MR. EIKEL:

I will so stipulate.

MR. WHITTAKER:

Did you say yes?

MR. EIKEL:

Yes, I said I will stipulate that they are labor organizations.

MR. WHITTAKER:

I stipulate, Mr. Examiner, and I offer the stipulation in evidence.

* * * *

C. B. MORROW

a witness called by and on behalf of General Counsel, under Rule 43(b), being first duly sworn, was examined and testified as follows:

* * * *

[204] DIRECT EXAMINATION

Q (By Mr. Whittaker) How are you presently occupied, Mr. Morrow?

A I work for Local 1351.

Q And how long have you worked for them?

A Since January 1, 1954.

Q In what capacity?

A As Business Agent, Business Representative.

* * * *

[205] MR. WHITTAKER:

I would like for the reporter to mark for identification as General Counsel's Exhibit 7, Constitution and Rules of Order as adopted at the first convention held in Chicago, Illinois, July 26-28, 1954. This is a small booklet bound in blue paper.

TRIAL EXAMINER:

Constitution and Rules of Order of what?

MR. WHITTAKER:

I.L.A. International

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 7 for identification.)

* * * *

[210] MR. WHITTAKER:

As General Counsel's Exhibit 21, scratch pad, which contains the out-of-work list from July 25, 1955, to December 20, 1955.

[211] MR. EIKEL:

You say out-of-work list?

MR. WHITTAKER:

Out-of-work list.

MR. CRYSTAL:

I think you are making a misstatement there, aren't you?

MR. WHITTAKER:

Well, it's both.

MR. CRYSTAL:

Then say it. Say what it is.

MR. WHITTAKER:

It used to be called an extra board when it was on the blackboard, and I understand from the witness he calls it an out of work list.

MR. CRYSTAL:

Correct it now. It shows those that worked and those that didn't work.

MR. WHITTAKER:

Correct.

MR. CRYSTAL:

All right.

(The documents above referred to was marked General Counsel's Exhibit No. 21 for identification.)

* * * *

【224】 Q (By Mr. Whittaker) At the present time, what is the percentage payment practiced at the hall of Local 1351?

A At the present?

Q Yes, sir.

A Three per cent.

Q For all?

A Members and non-members.

Q And does that include members of sister locals?

A No.

MR. CRYSTAL:

Now, just a minute. I am going to object to him asking this witness about sister locals, because I don't know whether he knows what sister locals are. If he knows, I have no objection.

MR. WHITTAKER:

I will rephrase it "the locals."

Q (By Mr. Whittaker) To members of sister locals of this area which work out of the hall of Local 1351, do you charge them three per cent?

[225] A You mean the men —

Q When you go to 1330 and 1270 and get a checker over there, do you get three per cent out of his pay?

A That's right.

Q Now, how long has this three per cent been in effect?

A To the best of my recollection, it was March 29, 1955.

* * * *

[233] Q Well, what is your present recollection as to your percentage practice before you went to three per cent for members and non-members?

A The non-union man, non-members paid five per cent and the members paid two per cent plus one dollar a month dues, and all assessments that was made on them.

* * * *

[237] (The documents heretofore marked General Counsel's Exhibits Nos. 10-A, 10-B, and 11 for identification were received in evidence.)

* * * *

[246] (The document heretofore marked General Counsel's Exhibit No. 19 for identification was received in evidence.)

* * * *

[248] TRIAL EXAMINER:

Let me get something straight in my mind.

Do you gentlemen agree that document which was General Counsel's Exhibit 19, and the first page of it is a letter, certainly, from Mr. Stephens?

MR. WHITTAKER:

Yes, sir.

TRIAL EXAMINER:

And you agree that the two pages of the document which was enclosed is a list of members of Local 1351 during the year 1955 and up to two or three days before January 10, 1956?

MR. CRYSTAL:

Yes, sir.

TRIAL EXAMINER:

Do you further agree the people marked on that document with a pencil notation with a "C" were checkers during that period of time?

MR. CRYSTAL:

Yes, sir.

MR. EIKEL:

We have no objection.

[249] TRIAL EXAMINER:

Now, can you agree the third page —

MR. CRYSTAL:

That page pertains to members —

TRIAL EXAMINER:

What I just said applies to the first page only; the members.

MR. CRYSTAL:

Correct.

TRIAL EXAMINER:

Now, referring to the second page of the enclosure, can you agree that is a list of people who were not members of Local 1351 during 1955 up to two or three days before January 10, 1956, who got employment through the hiring hall in Houston?

MR. CRYSTAL:

Yes, sir.

TRIAL EXAMINER:

Operated by Local 1351?

MR. WHITTAKER:

Yes.

TRIAL EXAMINER:

And that the "C" on this page also stands for checkers.
You agree on that?

MR. WHITTAKER:

Yes, sir.

MR. CRYSTAL:

Yes, sir.

MR. EIKEL:

We have no evidence to the contrary.

TRIAL EXAMINER:

Can you agree the third page is a list of people who belonged to I.L.A. Locals other than 1351, and I presume 1665, who got jobs during 1955 and up to two or three days before January 10, 1956?

MR. CRYSTAL:

Yes, sir.

TRIAL EXAMINER:

And got jobs through the hiring hall operated by 1351 in Houston. Is that agreed?

[250] MR. WHITTAKER:

Yes, sir.

MR. CRYSTAL:

Yes, sir.

MR. EIKEL:

Agreed.

* * * *

[251]

(The document heretofore marked General Counsel's Exhibit No. 21 for identification was received in evidence.)

* * * *

[254] Q (By Mr. Whittaker) Now, before we go any further, I would like — I believe when a ship is taking on cargo, you speak of it as taking on cargo or loading?

A Loading cargo.

Q And the discharge is being discharged or unloaded?

A That's right.

Q And this same cargo, when it's going into a truck or a railroad boxcar or whatever kind of car they use, it's being delivered?

A Yes.

Q And when that cargo is coming out of that railroad car or boxcar or out of the truck, it is being received?

A Right.

Q And those terms are important in deciding what sort of a chap to send on the job; is that correct?

A Yes.

Q Now, in your hall you have clerks, checkers, and timekeepers, is that right?

A Yes, sir.

Q Now, what is a tally man?

A We don't know that term, tally man, but I would say that [255] would be a checker.

Q And so, if somebody refers to tallying, why, that is checking?

A I would think so, yes, sir.

Q Now, in your time, have you been a checker?

A That's right.

Q A clerk?

A That's right.

Q A timekeeper?

A On very few occasions.

Q Now, what is a regular monthly man?

A Well, that is a man that works for some company by the month, gets paid by the month. We will say he's on a salary, a monthly salary. He may get paid every two weeks or every week, but he's on a monthly salary.

Q And he works out of your hall if he is a clerk or checker or timekeeper?

A He works for some company down there. He may be a member or non-member of our organization but pays his dues and percentage there, but he don't work out of that hall every day. He has a job up on the docks.

Q Now, that comes to the point where I need enlightenment. What does "working out" mean, extra work?

A Extra work.

Q That means something not regular?

[256] A That's right.

Q Now, a guaranteed 40-hour man, what is that?

A Well, that is a man that works for some one company and they pay him, guarantee him 40 hours a week on an hourly basis; they pay on an hourly basis.

Q What is the difference between him and the monthly men?

A The difference is because a monthly man gets his salary, his salary is so much a month and he gets a vacation, did up until this year; he would get a vacation if he worked for them a certain length of time. And if he worked holidays he got time and a half; and on a 40-hour week man, he wouldn't get any vacation; he would only get the hours that he worked.

Now, I say a guarantee of 40 hours a week; some of them guarantee them 40 hours a week regardless of whether there was any holidays in there or not. And others are not off on the holidays. If they worked 32 hours they paid them 32 hours. And if a holiday comes in there, which would make it 32 hours' pay, you see, and some of them paid them 40 hours regardless of holidays. Of course, that is not counting Saturday and Sunday. And they made that plus their overtime.

Q Now, what is a regular man?

A Well, I would say a regular man is a monthly man.

Q Without a salary or without a guarantee of 40 hours?

A I don't understand.

Q What do you call the man that doesn't go down to the [257] hall each day but just knows to go back to Lykes Brothers in the morning, maybe works a few hours, then

goes back the next day, but there may or may not be any work. But he always reports to Lykes.

A That is a man ordinarily works at Lykes.

Q Do you give him a different term, is that an extra man or regular man without any guarantees?

A I don't know exactly what term you give him. He is working for Lykes down there. I would say he comes under the term of 40-hour week man.

Q But not a guarantee?

A Not a guarantee.

Q And aside from the monthly man, a 40-hour guaranteed weekly man and a 40-hour a week man then you come to the extra men, is that correct?

A That's right.

Q And what is an extra man?

A Well, that's a man that works out of the hall. He is assigned to a job, and when he finishes that job he reports back to the hall and gets his name put back on that "for work" list.

Q Now, what is a clerk and what does he do?

A Well, I would say a clerk is a man that receives for a particular ship or ships and loads that ship after he receives this cargo —

[258] Q You mean he receives it off of a train or by truck and then unloads it?

A I would say he receives it out of a warehouse after it has been unloaded; he will go and count this cargo, and make a tag on it; and then he will write on that tag for such and such a ship. And then, of course, when he makes that tag and everything, he writes it up on his receiving address and he may receive for ten or fifteen days for that particular ship.

Then, when the ship arrives, he starts to unloading that ship and at least he gives you the cargo, gives the cargo to the longshoremen to load that ship, tells them what hatch he wants it in, on the 'tween decks, and so forth.

Q Let me ask you about receiving. What is segregating cargo?

A Segregating cargo is where cargo is marked for different consignees, and it's all mixed up when it comes off a ship, and they hire a longshoring gang and a checker to segregate it out to these particular marks or numbers is what it is.

Q Now, I understand that sometimes the term "chopping" is used in connection with coffee.

A That is.

Q Is anything other than coffee chopped?

A Anything that is mixed up.

Q So the clerk, while he is receiving in the warehouse, [259] would sometimes be segregating too in preparation to having the cargo later loaded on the ship?

A Well, I wouldn't think so, because most of the cargo we get is unloaded from the car or truck by a warehouse loader and segregated as it's unloaded; and the clerk, after they unload it on the dock, then the clerk takes it over and receives it. They may have a carload of canned goods going to several different consignees. It's unloaded out of a box-car by a carloader, and then the checker segregates it on the dock.

Then the clerk, after it's unloaded, the clerk comes by and gets that check sheet and they make out, and then he counts it again and receives it for that ship.

Q And when the ship comes in — what is a ship's clerk?

A Well, that is what I was talking about, a ship's clerk, we call them clerks or ship's clerks.

Q I see.

Now, if this ship has four hatches, how many clerks will it require, generally speaking, on mixed cargo?

* * * *

[261] Q Now, I believe from our prior talks with you that a clerk can check or keep time, most clerks can; but that a checker, some checkers can't clerk or keep time.

A Yes, sir.

Q Does the timekeeper get the same rate as a clerk gets?

A That's right.

Q Now, I believe that at one time a clerk used to get ten cents more an hour than a checker.

A Well, we always refer to it as ten cents, but actually, it is 11 cents now.

Q You have a past practice, but it would be, it would continue to be called that even though it's increased?

A Yes, sir.

Q Under the new memorandum, what is the difference?

A Under the new memorandum the checker's pay is \$2.60 an hour, and a timekeeper's pay is \$2.71 an hour; a clerk's pay is \$2.71 an hour, only when they are working a ship there is a 25-cent differential.

* * * *

[262] Q Now, what does a checker do?

A Well, a checker checks freight.

* * * *

[264] Q Now, what does the — just a moment, before I go on.

Does the clerk ever talk to the checker when working a ship?

A Yes. If a clerk is discharging from a ship he is in charge of a checker and he assigns him to a hatch or a spot on the floor every place he wants the men, he places the men that is sent to him, the checkers, every place he wants to place them.

Q How much authority does the checker have, does the clerk have over the checker?

A He has all the authority. They work under him.

Q If he won't do what the clerk tells him to, can he send him back to the hall?

A Yes, sir.

Q And in that case, will he ask you to send him another checker?

A Well, if he needs one to replace that man, he would.

Q What is the timekeeper's job?

A Well, the timekeeper's job is to keep the time of the [265] longshoremen, the hours they have put in.

Q And who keeps the time of the clerks and the checkers, generally?

A Well, sometimes the timekeeper does it; it's according to what company they are working for. And some companies the clerk puts the name down in a book and turns it over to the office.

Q Well now, what is the chief clerk, what does that title denote?

A Well, we don't have any such title. Of course, we give that title to the men that work for different steamship companies, that their work is in the office more or less, and

they can assign these other clerks to their job and can assign the checkers to their jobs, certain ships.

Q Is he sometimes known as a chief wharf clerk?

A Well, they call them chief clerks and they call them chief wharf clerks.

Q Are most of them salaried?

A That's right.

Q On most occasions are they the ones who contact you for extra men?

A Yes, sir.

* * * *

[266] Q (By Mr. Whittaker) Do you know a Mr. C. L. Colmer?

A Yes, sir.

MR. EIKEL:

What is that name, please?

MR. WHITTAKER:

Colmer — C-o-l-m-e-r.

Q (By Mr. Whittaker) Is he a member of your Local 1351?

A Yes, sir.

Q And has been for some 15 years, is that correct?

A I don't know exactly how long, but he has been there quite a while.

Q But at least since January 1, 1954?

A Yes, sir.

Q Is he the chief clerk for States Marine Corporation of Delaware?

A Yes, I'd say he is.

Q Do you know Charles W. Steiner?

A Yes, sir.

Q Is he the chief clerk for Strachan Shipping?

A Yes.

Q And has been a member of your union and chief clerk
[267] since 1954?

A Yes.

Q Is this Charles W. Steiner the same — correction, is
this Charles C. Steiner the same C. C. Steiner that appears
as a member of the Executive Board on General Counsel's
Exhibit 18?

MR. CRYSTAL:

I thought you said the man's name was Charles W. Steiner.

MR. WHITTAKER:

I am in error. It's Charles C. Steiner, if I said that. I
found my error.

A Yes, sir, he was a member of the Executive Board in
1955.

Q And 1954?

A Yes, sir.

Q Do you know S. T. Gardner?

A Yes, sir.

Q Is he the chief clerk for Texas Transport & Terminal
Company, Inc.?

A Yes, sir.

Q And has he been that since 1954?

A Yes, sir.

Q And during that period of time, also a member of your
union?

A Yes, sir.

Q Do you know W. A. Keither?

[268] A Yes, sir.

Q Has he been a member of your union since 1954?

A Yes.

Q Since 1954 has he been the dock superintendent for Waterman Steamship Corporation?

A Well, I'd say he was the clerk. I don't know whether his title is dock superintendent or not.

Q Would you be inclined to call him the chief clerk?

A The same as the other men, yes.

TRIAL EXAMINER:

I take it in your question that "since 1954" means continuously since December 1954 up to date.

MR. WHITTAKER:

Yes, sir.

Q (By Mr. Whittaker) Do you so understand that, Mr. Morrow?

A Yes, sir.

Q Now, do you know U. T. Malanaphy? They call him Mike.

A Yes.

Q They do call him Mike, is that right, Mr. Morrow?

A Yes.

Q Since 1954 has Mike Malanaphy been a member of your union?

A Yes, sir.

Q During the year of 1955 was he a member of your Executive Board?

A He was a member of the Executive Board in 1956.

Q You see this date says up to January 24, 1956.

[269] A That is an expiration date.

Q Is that an expiration date?

A January 24, 1956 is — here was — he was a member of the Executive Board in 1956.

Q Was he in 1955 a member?

A No, I don't think so. I was trying to think who took Mr. Binford's place.

MR. CRYSTAL:

I think it shows right on its face that he wasn't.

THE WITNESS:

May I ask Mr. Vestal?

MR. WHITTAKER:

Yes. Off the record.

TRIAL EXAMINER:

Off the record.

(Discussion off the record.)

TRIAL EXAMINER:

On the record.

Q (By Mr. Whittaker) Was he a member of the Executive Board in 1955? I asked you, and I believe the answer is no.

A That's right.

Q Now, since 1954 has he been the chief clerk for Lykes Brothers Steamship Company?

A Yes, sir.

Q Do you know W. C. Mann?

A Yes, sir.

Q Since 1954 has he been a member of Local 1351?

A Yes, sir.

Q Since 1954 has he been the only clerk on that payroll, [270] that is, salaried?

TRIAL EXAMINER:

On whose payroll?

MR. WHITTAKER:

I'm sorry.

Q (By Mr. Whittaker) On the payroll of Fowler & McVitie, Inc.

A The only one I know of.

Q They don't have any 40-hour guarantee?

A He is the only one I know of that works for Fowler & McVitie.

Q Two or three years ago did he serve on your contract negotiating committee?

A Yes.

Q Could you give us the exact years? That would be for the supplement or would it be for the 1953 agreement?

A I don't remember of him serving. He served on it this year. I don't remember Mr. Mann serving on the contract committee.

Q Maybe that was before you were business agent.

A It might have been.

* * * *

[271] Q Do you know Roy E. Scalf?

A Yes.

Q Since 1954 has he been the chief clerk for Hansen, Tidemann?

A Yes.

Q Since 1954 has he been a member of your Local 1351?

A Yes.

Q Do you know T. Elmer Starr?

A Yes.

Q Is he the only clerk that is a salaried clerk on the payroll of Wm. Parr & Co.?

A The only one I know.

Q And has he been there since 1954?

A Yes.

Q And has he been a member of the union during that time?

A Yes.

Q Do you know W. Walter Waite?

A Yes, sir.

[272] Q Since 1954 has he been the chief wharf clerk of E. S. Binnings, Inc.?

A Yes.

Q Has he been a member of your Local 1351 during this time?

A Yes.

Q Do you know George Williams?

A Yes, sir.

Q Since 1954 has he been the chief clerk and dock superintendent for United Fruit Company?

A No, sir. Biehl & Company.

Q During this time has he been a member of Local 1351?

A Yes, sir.

Q Of course, you know Mr. Vestal here?

A Yes, sir.

Q He is now, at present, your president of Local 1351?

A Yes, sir.

Q And he was president during the past two years, is that correct, 1955 and 1954?

A No, he was president in 1955 and —

Q 1956?

A Wait a minute. Wait a minute. He was president in 1956. He was vice-president in 1955.

Q Now, just so we have it in one spot in the record, I believe I asked you earlier about this — when was it that he [273] took over the actual full-time job with the local?

A January 1 and 2; January 1 was a holiday; I would say January 2, 1957.

Q And prior to that he was the only full-time clerk since 1954 at Rice, Kerr & Company, which used to be Thomas Rice & Company?

A Yes, sir.

Q And he held that job since 1954?

A Yes, until January 1957.

TRIAL EXAMINER:

Wait a minute. Read the question and answer.

(Record read.)

Q (By Mr. Whittaker) Who are the members of your present negotiating committee?

MR. CRYSTAL:

You mean this past year?

MR. WHITTAKER:

I was going to say right today.

MR. CRYSTAL:

Well, you just got through one.

A The contract men?

Q You have a present contract committee?

A Yes, sir.

Q Who are they?

A Mr. Vestal, H. C. Boyd, and W. C. Mann.

Q Do you have a contract committee each year or just on the years you negotiate contracts?

A Well, we have sometimes the same committee will act for [274] three or four years, until they decide to change them or something.

Q When you took over as Business Agent in 1954 who were on the Contract Committee?

A There was W. W. Waite and H. C. Boyd — I can't remember the other one.

Q Maybe we can think of it later.

TRIAL EXAMINER:

Can we find out what a contract committee is, please, sir?

Q (By Mr. Whittaker) Is the contract committee defined in your Constitution and By-Laws?

A I don't know exactly how it's worded in there.

Q Is it in there?

A I thought a contract committee is a man that the local sends to Galveston or where they have the meeting at to make a contract.

MR. CRYSTAL:

Call it Negotiating Committee, don't then?

THE WITNESS:

The Negotiating Committee.

TRIAL EXAMINER:

That is what I wanted to know. I didn't know whether it is the Negotiating Committee or a committee that polices the agreement, or just what it was.

THE WITNESS:

I remember the other man now.

Q (By Mr. Whittaker) I don't believe it's in there, but will you take time to see if you can locate it. I think I looked for it once before.

[275] Can you recall who the name of the other man on the contract committee for 1954 was?

A C. C. Steiner.

Q Now, we searched the Constitution and By-Laws, and we didn't find any mention of a contract, of a negotiating committee or contract committee. Will you tell us how this committee is selected?

A Well, it's — this committee is nominated and elected like any other officer in the organization.

Q It's not an appointed committee then?

A It is not an appointed committee.

Q And at the time they are elected, are they elected for a definite length of time, or what, or until replaced or what?

A Until replaced. To the best of my recollection, the last two committees was — the last committee was on three or four years.

Q Now, do they help negotiate the contract?

A Yes, sir.

* * * *

MR. CRYSTAL:

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Q Now, do they help negotiate the contract?

A Yes, sir.

* * * *

[276] Q (By Mr. Whittaker) Now, in 1955 who was on this contract committee?

A Well, I think the three men I give you the names of them that was on there in 1954 was still on the committee in 1955.

Q And who was on there for the year 1956?

A Well, they were on it, it seems like — to the best of my recollection, Mr. Boyd, Mr. Waite, and Mr. Steiner served until December 1956.

* * * *

Q . . . How does a newcomer get to work in the Port of Houston as a clerk or a checker or time keeper out of Local 1351.

MR. CRYSTAL:

I would like to know what you mean by "newcomer."

MR. WHITTAKER:

Somebody who is new to Local 1351, say, **[277]** came in from Mobile or, say, Mobile, Alabama.

MR. CRYSTAL:

You mean now or how they did it back there in 1954?

MR. WHITTAKER:

Now.

MR. CRYSTAL:

I object to it about now.

TRIAL EXAMINER:

Overruled.

Answer the question.

A Well, we have this application form, and most of the men are sent down there by some friend of theirs that is working on the waterfront. They come in and ask for a job and tell me some friend of theirs sent them down there. I give them one of the applications to fill out. They fill that application out —

Q (By Mr. Whittaker) Is this friend a member of Local 1351 or member of some other local?

A Most of the time he is a member of 1351, or some other local, or maybe it's somebody that I know down there, somebody that I know in the cafe or some place like that.

Q Now, looking at General Counsel's Exhibit No. 13, is this the application you were referring to?

A Yes, sir.

Q And after he fills that out, what does he do with it, does he give it back to you?

A Turns it back to me.

Q Then what takes place, do you tell him to do anything [278] before you are willing to send him out?

A Well, I look it over, and I put it where the other officers of the local can look it over; and I ask him if he doesn't have experience in checking, clerking, and keeping time, I ask him will he go on the waterfront and work on his own time until he learns something about this work. And if he says he will, well, he goes out for several days. Maybe I put his name on the list and they call up for a man, I call his name out. Sometimes they choose him and sometimes they don't.

Q Well now, when he goes out to work on his own time, do you tell him to look up a clerk or checker that is out on the job and, "He will give you some pointers"?

A Yes, sir. I tell him to go to a certain dock, look up a certain man or men, and introduce himself and tell him what he is down there for; and they in general help him.

Q Will they give him some form to let him fill out like they are filling out theirs?

A They might.

Q In other words, it's sort of like on-the-job training in industry, but it's generally without pay, is that right?

A It's without pay.

Q And then you say after three or four days he comes back to the hall?

A Yes.

Q After three or four days of experience, I guess?

[279] A That's right.

Q And at present, where do you keep a record of his name?

A After he comes back, say, three or four days, getting experience on the job, then I put his name on the back of this tablet.

Q You are referring there to General Counsel's Exhibit 21. What you mean, of course, is the current tablet that you are using?

A That's right, sure.

Q And now, back in 1954 how were you doing when someone new came in?

A Well, the best I remember, they would bring in an application; they would make out an application.

Q Do you have that form?

A No. They would make out one just on a letterhead.

Q Whose letterhead?

A Well, no particular one, just — I mean make out an application for a job on a piece of paper.

Q Would they sign anything else?

A They would ask for employment and sign their name, and give some particulars about themselves, what they have been doing, and so forth, and why they were seeking employment.

Q Did you explain to them that they would have to pay this five per cent of their wages as a percentage fee?

A Yes, sir.

[280] Q As a percentage?

A Yes, sir.

Q Did they sign anything agreeing to pay it in?

A Well, I don't remember at that particular time whether they signed anything or not. That was understood when they went to work, when they come after the checks they would have their money, figure it up themselves what the percentage would be and pay it.

Q Well, while you were there as business agent, has there ever been an occasion where a member or non-member has not paid their percentage whatever it was at the time?

A There have been a number of occasions when a man might not have the money at that particular time. He may bring it back two or three days later, and some of them never did bring it back, as far as that is concerned.

Q Did they ever work out of the hall again?

A Yes.

Q Who are they?

A Well, I don't know of any particular ones.

Q Mr. Morrow, don't you know that no one has worked out of that hall without paying their percentage since you have been business agent?

A Well, I don't know. A man might, a small amount, 25 or 30 cents, and not have it at the time, and maybe forget about paying it.

[281] Q Well, it would be something inconsequential then?

A It wouldn't be a big amount.

Q It is your duty as business agent to collect it, isn't it?

A That's right. If it's not collected I make it good, myself.

TRIAL EXAMINER:

Now, can we get back to answer the question, what it is and not what might be?

Q (By Mr. Whittaker) The question is this, Mr. Morrow: Can you name any specific instance in which a man has worked out of the hall without paying his percentage?

A Well, I will say no.

Q If it has happened, you have forgotten about it, is that correct?

A Yes, sir.

Q Now, is there any changes since 1954 when you first became business agent, and the present, in the way a new man starts working out of Local 1351 hall other than what you have told us? You have told us about the application that is signed at present.

A That is the change I know of, filling out this application.

TRIAL EXAMINER:

Well, the answer to one of Mr. Whittaker's questions was — you said after the man got in there and signed this he signed something else. What else is it [282] he signs?

THE WITNESS:

Did I say sign something else?

TRIAL EXAMINER:

I thought you did. I thought you said after he interviewed — after he was interviewed he signed his name, but you didn't say what to.

THE WITNESS:

I said I signed his name.

TRIAL EXAMINER:

Oh, you put it on a pad similar to General Counsel's Exhibit 21?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

All right. Thank you.

Q (By Mr. Whittaker) Now, what is the normal procedure for extra men being ordered out of the hall —

MR. WHITTAKER:

Strike that just for a moment.

Q (By Mr. Whittaker) Ordering a man out of the hall, what does that mean, Mr. Morrow?

A That means that there is someone with Lykes Brothers, chief clerk, superintendent, Mr. Moran, may call and ask for so many checkers, for such and such a berth at such and such a time.

Q Would this be in advance of the ship arriving?

A Well, they are supposed to give us a two-hour notice.

Q Do some of them call in several days early and give you a couple days' notice?

A No, they don't call in and give me an order. They might tell me they will need so many men on such and such a [283] date, but that is not an official order.

Q Then if they do give you an informal advice or a little beforehand notice, it's not official until they call you up and tell you definitely to have the men report at a definite pier?

A That's right.

Q Is there any difference between a pier and a dock?

A No, sir.

Q And when these — what are the various ways in which men are ordered out of the hall? I believe you said once by name.

A Well, a man will call and say he wants five men for Long Reach 8 at 7:00 o'clock in the morning, and he will call me the evening before for a 7:00 o'clock order for the next day. He will ask me who I have available —

Q Before you go any further —

MR. CRYSTAL:

Let him finish his answer.

MR. WHITTAKER:

I am coming right back to it.

Q (By Mr. Whittaker) Is Long Reach the name of a dock or —

A Yes.

Q What would 8 mean?

A The dock, dock, pier, berth is all the same.

Q Go ahead.

A And he will ask me who I have on the available list, [284] and I will call the names off this available list and he will select —

Q This is the same as this extra work list?

A Yes. He will select the men he wants.

Q Are there other ways that he may do it?

A I don't understand.

Q Let's put it this way. Do you ever get any orders today without naming the men?

A No. They all ask me who I have on the board, call the names.

Q Well, do they say, "Send me Sam Jones and Johnny Smith and three others," sometimes?

A No.

Q They don't do that today, Mr. Morrow?

A No, sir. They tell me, they will call the names out and say send me so and so.

Q What about the Port Commission, when you get a call from them?

A Well, sometimes the Port will call and he will ask for some men different places.

Q Without naming them, is that right?

A Sometimes, yes, sir.

Q Well, in other words, some companies are more particular than others, that is what it boils down to, doesn't it?

A Yes, sir.

[285] Q And some of your men are better known to those companies or they have a higher degree of skill in the particular type of cargo that is being either loaded or unloaded; is that correct?

A That's right.

Q Now, in the Port of Houston, do all the companies that you do business with, steamship companies and the

ones that are named here, do they close their payroll at the same time?

A Well, no. Some of them close the payroll on Saturday, midnight Saturday; some of them close it Monday and some were closing it up to, say, a month ago, on Tuesday. But they are trying to, I understand they are all trying to get together now and close it on a Monday, at 6:00 o'clock Monday morning.

Q Well, back in 1954 were they all closing on a Tuesday?

A Oh, no, sir. They were closing, like I say, Saturday, midnight Saturday, Mondays and Tuesday. And then some of the companies, why, closed the payroll when a man finished the job.

Q Now, going back to the subject I was on before this scratch pad, since you have been business agent is that the way you have always kept the men that operated on the available list?

A No. When I first went in there we operated off of a blackboard.

[286] Q And how was this blackboard arranged? First, where was it located in the hall?

A Well, we had one blackboard located in the main room of the hall. We had another small blackboard located in the little office that I stayed in.

Q What kind of names did you keep on these two blackboards?

A Well, on the blackboard in the hall I had the names of all the non-members and the newest on one side of the board, and on the other side of the board I had the names of the newest non-members.

Q Permit men?

A Yes.

Q A member is sometimes called a button man, is that right?

A Yes.

Q And sometimes that is abbreviated to a button man?

A Yes.

Q What did you keep on the small blackboard inside of the office?

A I kept the members' names.

Q And how did you handle assignments from these various boards at that time?

A At that time I tried to rotate the men to the best of my — but I had, like I said, three categories of work, clerks, timekeepers, and checker. And I seen that I couldn't rotate it to that account, because these timekeepers, these checkers [287] that could keep time and clerk, naturally were making more money and going out more than these other men.

Q And at that time if they went out by name, there is ten or eleven cents differential that the company paid in wages; is that correct?

A Yes, sir.

Q Was that differential at some time more or less discontinued?

A Well, the differential wasn't discontinued, but they discontinued just ordering men; they had to write to order men, and by name, whether they paid them the differential or not.

Q But according to the contract on Page 3 of this printed-up form, Section 4, Subsection (c), differentials it says: "A differential payment of ten cents a man per hour will be paid checkers, tally men, timekeepers and extra wharf clerks in lieu of pension —"

MR. WHITTAKER:

I withdraw that, Mr. Examiner.

It's on Page 1, Section 1, Subsection (b) in the middle of the section.

Q (By Mr. Whittaker) I call your attention to Page 1 of Section 1, Subparagraph (b):

"The members of the Parties of the First Part shall have the right to employ members of the Party of the Second Part, calling them by name to be used as regular salaried wharf clerks, extra wharf clerks or timekeepers as provided [288] in Paragraph 4."

My question is this: That doesn't say anything in there about naming checkers, is that correct, that section or any other section of that contract?

MR. CRYSTAL:

Paragraph (b)?

MR. WHITTAKER:

And the whole contract, whether they have the right to name a checker.

MR. CRYSTAL:

Are you asking the witness a question?

MR. WHITTAKER:

Yes, sir.

MR. CRYSTAL:

The contract speaks for itself.

TRIAL EXAMINER:

Are you objecting?

MR. CRYSTAL:

Yes, sir.

TRIAL EXAMINER:

Sustained.

Q (By Mr. Whittaker) All right, sir.

Under the contract, if a man was named prior to the discontinuance of the practice, he was considered to receive the rate of a clerk or a timekeeper even though he did checking work?

A Yes.

Q Is that correct?

A That's right.

Q And now that practice isn't being followed, is that right?

A No, sir.

* * * *

[289] Q (By Mr. Whittaker) Do you recall when you posted a notice at your union hall in settlement of CB-90?

A When I posted the notice?

Q Yes, sir.

A Well, it was the first part of May, seems like May 10 or 11, something like that.

Q 1955?

[290] A 1955.

Q Now, if — well, in relation to that date, when did you quit using the blackboard and start using the scratch pad, before or after?

A I don't remember that. It's in that affidavit I made, in one of those affidavits I made.

Q Well, I was wondering, Mr. Morrow, if this isn't the first scratch pad you made.

A No, I don't think so. I had several before that.

MR. CRYSTAL:

July 5.

Q (By Mr. Whittaker) Of 1955, is that correct?

A I had a scratch pad before that.

* * * *

[291] Q Well now, directing your attention to the Charge in 39-CB-90, filed on November 17, 1954, to that date were you using the scratch pad on that date or were you using the blackboard?

A 1954?

Q Yes, sir.

A Using the blackboard in 1954.

Q Sometime between the end of 1954 and before June 1, 1955 you made that change?

A Yes, sir.

TRIAL EXAMINER:

When you get to a good breaking place for the week end, let me know.

MR. WHITTAKER:

Yes, sir.

Q (By Mr. Whittaker) What was the occasion for making [292] this change, what were your reasons?

A My reasons was that every time a man called me on the telephone and told me that he was off, to put him on the board, I would have to get off my chair and walk thirty feet and write his name on this blackboard, and then walk back to the office.

And another reason was when I sent men out on the job, I would have to go over to this blackboard and erase their names on it, or erase a checkmark or something off. And it was just a little bit too much work when I could do it so much easier on the back of a pad.

Q How did the names get on the blackboard, Mr. Morrow?

A Well, if a man reported off from work and he walked in the hall, he put his own name on the board. And if he called me by phone, I would have to put it on there.

Q And on this scratch pad, did you do all the writing or most of the time, that is?

A I done all the writing, when they reported off, I picked up the pad and put their name down; or if their name was already on the list when they went on the job, I made a check mark by the name; and if they came back off that job, if their name was already there, I would erase that check mark.

* * * *

[301]

(The document heretofore marked General Counsel's Exhibit No. 27 for identification was received in evidence.)

TRIAL EXAMINER:

Can you gentlemen agree that the document identified as General Counsel's Exhibit 27 has been made effective [302] ive and was made effective as of approximately February 14, 1957?

MR. CRYSTAL:

We agree.

MR. EIKEL:

We agree.

TRIAL EXAMINER:

Thank you, gentlemen.

MR. WHITTAKER:

I will stipulate.

Q (By Mr. Whittaker) Well, your contract speaks of wharf clerks. In this supplement what term covers a wharf clerk?

As you can see, wharf clerk is also referred in GC-11. What term are you using in this new document, GC-27, to cover wharf clerks?

A They speak of a wharf clerk in there and they speak of a clerk here (indicating). I don't think it's any difference, just a different way of calling a wharf clerk or whatever you might want to call him.

Q Well, has sometimes a wharf clerk been used to designate the chief clerk, where a company has several clerks?

A We call them all clerks, and they use that term — they may use that term, wharf clerk or monthly clerk or

salaried clerk or something like that, but it all boils down to the same thing. They are clerks.

Q Yes, sir.

■ * * *

[303] Q Mr. Morrow, in the port of Houston is it the custom that when you speak of a stevedore you are speaking of a company rather than an individual who does longshoring work?

A A stevedore?

Q Yes, sir.

A We speak of a stevedore as a company.

Q Yes.

And the man who carries or helps, to see that it is carried, the cargo, he is called a longshoreman, is that right?

A Yes, sir, that is what we call him.

Q Now, in referring to other ILA locals on General Counsel's Exhibit 19, the last page there, members of other ILA locals, there's 1330. What kind of a local is that?

[304] A 1330 is a warehouse local.

Q And what do they normally do?

A They load cars, load trucks, unload cars, unload trucks, segregate cargo on the dock.

Q Is that a white local?

A 1330 is a white local, yes, sir.

Q Yes, sir. What is local 1273?

A 1273 is what we call a deep sea white local.

Q And what do they normally do?

A Well, they load the ship, discharge the ship.

Q Now, there are corresponding locals that are colored members only that you have in the port of Houston. One that cover 1330 would be what?

A 1331.

Q And the one that would cover or correspond to 1273 would be what?

A 872.

Q And they do just about the same thing, is that right?

A Yes, sir.

Q Did you ever use any checkers from either Local 1331 or 872?

A No, sir.

* * * *

[305] Q (By Mr. Whittaker) How are the members of Local 1351 paid for their work?

A They are paid by check from the different companies they have worked for, and these checks are sent to the hall, the union hall, or we send after them.

Q Well, now, do you go after them, yourself?

A No, sir, I don't.

Q Well, have you ever gone after some checks?

A Oh, I have, yes, sir.

Q Yes, sir.

A I have gone after them.

Q Well, what determines whether you go after the checks or whether the company sends the checks down to the hall.

TRIAL EXAMINER:

When you are using "you" there do you mean the witness personally or local 1351?

MR. WHITTAKER:

Well, modify it to include anyone from the hall.

TRIAL EXAMINER:

All right.

A The reason that we send for the checks is because we get them earlier in the day.

Q (By Mr. Whittaker) Who normally does that?

A Well, no certain one. Just anyone in the hall that is not working at the time.

[306] Q Would you tell him to go get them?

A I wouldn't tell him. I would ask him did he want to go up there and get them.

Q I see.

A So he could get his money, and they volunteered to go up there and get them.

Q Sure.

A And sometimes the business agent for 1330 brings them down when he goes after his checks. I mean his member's checks. He will bring them to his hall and I will go up there and get them, myself, or ask someone to go get them for me. They voluntarily go get them.

Q How far is his hall from your place?

A Oh, about half a mile.

Q Well, now, where are these checks picked up? Are they picked up at the Master Stevedores?

A That's right.

Q Do you get them all through the Master Stevedores or just some of them?

A Some of them through Master Stevedores, but Lykes Brothers, Biehl & Company, Tidemann & Dalton — Hansen & Tidemann it is now, I believe, and TTT, their paymaster brings them over to the Master Stevedores' office and we pick them checks up at their office.

Q I call your attention to Appendix A here, the notice of [307] hearing, which is part of General Counsel's Ex-

hibit 1-A. Will you refer to the section of the members of Master Stevedores Association of Texas? Does it include all those members there at the bottom of the page?

A Yes, sir.

Q And for how long a time now has that been going on, this form of collecting the checks?

A Well, it's been going on, of course the Master Stevedores I don't remember, about a couple of years on them, since they have been making out checks as members of Master Stevedores, but the other checks, Lykes Brothers and different ones, when I first went in the office, they sent their checks down there.

At that time they brought them down there about four o'clock in the afternoon on Friday.

Q Down where, to the hall?

A To the hall.

Q To the hall?

A Yes, sir, and other companies, why, some of them would send them down and some of them would, like Strachan, for instance, some of the men working for Strachan would go up there and pick them up.

* * * *

[309] Q (By Mr. Whittaker) After the checks come to the hall, then, or however they get there, what since 1954, the first of '54, let's say, has been your procedure in giving the men their checks?

MR. CRYSTAL:

Mr. Examiner, I wish counsel would sort of confine himself to some particular dates in 1954. The question

at present is too general and they have been doing one thing in part of '54 that they didn't do in another part of '54.

MR. WHITTAKER:

Well, since May 17.

TRIAL EXAMINER:

Well, he's revised the question now.

MR. WHITTAKER:

Since May 1954.

A Well, a man would come in there to pick up his check and I would hand him his check, check or checks, ever how many he had coming, and I would figure out the percentage and tell him how [310] much it was, and he would pay the percentage, if he had it in his pocket. If he didn't he would tell me he would bring it back later.

Q (By Mr. Whittaker) Well, were some of the checks arranged so that the percentage appeared in a separate check from that of the rest of the wages?

A Not at that time.

Q Do you recall when they first started doing that?

A Well, the Master Stevedores are the only ones to do that, and —

Q Companies that paid through Master Stevedores?

A The companies that paid through Master Stevedores had two checks, one for percentage and one for the individual.

Q Well, what is your best recollection when Master Stevedores started paying two checks?

A Oh, I know it was — I am sure it was through 1956. I don't remember the date.

* * * *

[311] Q Well, when a man goes to the MSAT to pick up his checks does he sign anything up there for the checks?

A He signs a receipt for the amount of checks. There's 60 checks, 69 checks, 80 checks, he signs for that many checks.

[312] Q Signs for the total rather than the total cash amount?

A Yes, sir.

Q And if they are brought to the hall by the company or when they were brought down, did someone at the hall have to sign for them?

A Yes, sir, ever who received the checks signed for the amount of the checks.

Q Have you signed for them?

A Well, I have signed for them on a number of occasions, yes, sir.

Q Well, would it be correct to say on most occasions whenever you were there you were the one that signed?

A When they were brought down to the hall, yes, sir.

Q In other words, they were looking for you as the business agent, is that right?

A That's right.

Q These checks issued by MSAT, what are they, A and B is that the numbers they use on them?

A That's right.

Q Which one is the percentage?

A Check A.

Q A.

Now, does the man endorse that and then turn it over to you?

A Yes, sir.

* * * *

[313] Q I believe last year there was a refund on percentage. Let's see, would that be last year? The year before, I believe, 1955. As I recall, it was six months preceding November 1, 1955. Is that correct?

A Yes, sir.

* * * *

[316] Q (By Mr. Whittaker) Mr. Morrow, why did you refund six **[317]** months of the percentage during the year 1955?

A Well, the membership voted to refund it.

Q Was there a surplus?

A Well, I don't know whether you would call it a surplus or not.

Q Well, did you just have that much money in your treasury and no use for it?

A Well, we had that much money in the treasury to pay this back. ...

* * * *

[320] Q (By Mr. Whittaker) Are you an officer of Avenue N Building Corporation?

A Well, I think all officers of 1351 are officers —

MR. CRYSTAL:

Just answer his question. He asked you if you were an officer of Avenue N. If you are tell him you are and if you are not tell him you are not.

A Yes.

Q (By Mr. Whittaker) Then the next question, are all the officers of Local 1351 also officers of Avenue N Building Corporation?

[321] A Yes, sir.

Q What office do you hold in Avenue N Building Corporation?

A I don't know, sir, exactly. I hold the office of business agent in 1351, as you know.

Q Yes, sir.

A But I don't know what title I hold in Avenue N.

Q Are you a stockholder in Avenue N. Corporation?

A Yes, sir.

* * * *

[326] Q Now, did you get a check for a hundred dollars from the [327] Avenue N. Corporation?

* * * *

MR. CRYSTAL:

Members of what? Stockholders of Avenue N?

[328] THE WITNESS:

Stockholders of Avenue N, yes, sir.

* * * *

[329] Q In going to another matter, Mr. Morrow, on Friday you testified as to monthly men and to forty hour guarantee a week men and to regular men.

Can you say for the year 1956 how many of your members were employed as monthly men?

A Well, at one time in 1956 we had thirty-four men employed as monthly men.

Q Were they all members? Is there anything you can look at that would help you?

[330] A I could look in a book.

* * * *

A What is the question exactly, sir?

Q Well, we changed it to 1955, of the monthly men how many **[331]** were there and how many of them were members?

A Well, in the first part, in January 1955, there was 27 men working on a monthly salary, and some of them men were members and some were non-members in January 1955.

In December 1955 there were 28 men working on a regular salary, and to the best of my knowledge all them men belonged to the union in 1956.

* * * *

[354] **HERRICK VESTAL**
a witness called by and on behalf of the General Counsel,
being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) ...

* * * *

[355] **Q** And presently whom are you employed by?

A ILA Local 1351.

Q And in what capacity?

A President.

Q Now, as President are you an Assistant Business Agent or are you just President?

A You want the duties I perform, is that what you would like?

Q If that would be easier, yes, sir.

A Well, every other week end I act as Business Agent, on Saturday and Sunday. Primarily I cover the docks daily and tend to any other business that the union may see fit for me to handle.

Q How long have you been devoting full time to Local 1351?

A Since the first of the year.

Q And before that who were you employed by?

A Rice, Kerr & Company.

* * * *

Q (By Mr. Whittaker) And for how long did you work for them?

A Approximately two and a half years.

Q In what capacity?

A As clerk.

Q Were you a monthly man?

A Yes, sir.

[356] Q Were you the only monthly clerk they had?

A When I started. Later on we added an additional monthly man.

Q And what was his name?

A T. J. Martin.

* * * *

Q Are you a member of Local 1351?

A Yes, sir.

Q How long have you been a member?

[357] A Oh, I would say five or six years.

Q And prior to that had you been a member of any other ILA Local?

A No, sir.

Q Have you held any office in the Local?

A Several different offices.

Q What was the first office you held?

A The first one was Recording Secretary.

Q And when was that?

A It was approximately five years ago.

Q And how long did you hold that office?

A I think for one or two terms.

Q And then what office did you hold?

A Of Vice-President.

And how long did you hold that office?

A One year.

Q And after that what office did you hold?

A President.

Q And how long have you been President?

A Well, this is my second year.

Q Well, did you pay your percentage to the Local from this check that you received there at the dock office?

A Yes, sir, I did.

Q How did you go about paying your percentage?

A Mostly I paid mine by check. Occasionally by cash. You [358] asked for percentage, you are speaking of?

Q Yes. Did you go by the hall or did you just mail it in?

A Well, usually — well, the latter part I mailed it in.

Q Now, have you worked for any other company on the waterfront other than Kerr, Rice, Kerr & Company?

A Well, I worked for practically every company on the waterfront at one time or another.

Q What type of operation does Rice, Kerr & Company engage in?

A They are steamship agents.

Q And agents for some steamship lines?

A Foreign lines, several different companies, foreign.

* * * *

Q Now, they do their own stevedoring or do they have someone else do it?

A No, sir, the other clerk was doing stevedoring.

Q Did they have any particular stevedoring line that they most often used?

A Usually it was Suderman, Atlantic & Gulf.

* * * *

[359] Q (By Mr. Whittaker) Before Mr. T. J. Martin came to work there what were your duties?

A Receiving cargo.

Q Now, where did this cargo come from?

A From drayage and unload cars.

Q Anything else?

A Well, not offhand. Some of it would come from the terminal berth, out of storage, we would call it, from one section of the warehouse to the dockside.

TRIAL EXAMINER:

You can talk louder than that, can't you?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

Thank you.

Q (By Mr. Whittaker) And what other duties did you have, Mr. Vestal?

A Well, after I received the cargo and the ship was in to be **[360]** loaded, well, then I passed out the cargo on either cargo being handled out or cargo being discharged, and at times the delivery of the cargo that was discharged to the dock, delivery to trucks and so forth.

Q Well, in this connection did you have the need for any checkers or other clerks?

A Occasionally, yes, sir.

Q How did you secure their services?

A Through Local 1351, the Business Agent.

Q Well, didn't you do the ordering?

A Yes, sir, I did.

Q Well, tell us in just so many words how you go about ordering clerks and checkers.

A Well, if I needed a clerk or a checker, well, I would call the Business Agent and ask him what men were available, and then he would read the names off to me, and I would select the men for whatever duty I needed them for.

Q And in this connection were there sometimes when you didn't recognize some of the names?

A A few times, yes, sir.

Q Would you ask any questions about them?

A Then I would question the Business Agent as to possibly the age of a man, and who he had worked for before, what companies, if any, and if — ask him any reports as to the type of work he had been doing, if he had checked steel, been down in the hatches, [361] or if he had had any experience at all working along with anyone, receiving or anything.

Q Well, since you ordered them by name did you pay them the clerk's wage?

A I did in some instances.

Q What would be determinative?

A Well, it would be an occasion, I think, like I mentioned in my report, where at one time I would use the same man on several occasions, and he performed a good job, and I paid the man the ten cents, which was not compulsory. Other times if I used a man maybe for the first time or I wasn't too satisfied with his work, had to spend too much time with him, I did not pay him.

TRIAL EXAMINER:

Could I ask a question right there, please, sir?

MR. WHITTAKER:

Yes, sir.

TRIAL EXAMINER:

Who determined whether you needed one checker or more than one checker? Did you do that originally?

THE WITNESS:

Yes, sir, I did.

TRIAL EXAMINER:

Then you called, got the numbers that you needed?

THE WITNESS:

Yes, sir.

* * * *

【365】 Q Now, what authority do you have over any of these men that are sent to you from Local 1351?

A Well, how do you mean?

Q Well, can you fire them or knock them off or excuse them to get off to go some place?

A Well, if I had a clerk, we'll say Schreiber, for instance, and to the extent I had borrowed the man, and for some reason his work was not competent, I had the authority to send him in.

Q Back to the hall?

【366】 A Send him to the hall or dismiss him.

Q And then if the job was over who was the one that told them, even if it were in the middle of the day, to take off?

A Well, if the job was finished at noon and they were working with me, I would send them in, told them that was all.

Q I believe — do you know R. F. Byrne?

A Yes, sir.

Q Did you have an occasion to discharge him?

A Yes, sir.

Q Who is Mr. Byrne?

A Well, he is a member of our Local.

Q And what was the occasion for discharging him?

A Well, the occasion I discharged him was for, I would say, getting into some intoxicants and I didn't figure that he was capable of handling the job in the afternoon so I turned him loose.

* * * *

[369] TRIAL EXAMINER:

Well, were you President of 1351 in 1955? I understood you were President in '56.

THE WITNESS:

No, I was Vice-President then.

MR. WHITTAKER:

Vice-President.

THE WITNESS:

I was Chairman then and Vice-President.

* * * *

[375] Q Who keeps the time on the clerks and checkers that you use?

A You mean what —

[376] Q Excuse me, while you were with Rice, Kerr.

A Rice, Kerr?

Q Rice, Kerr, please.

A I did.

Q You didn't have any regular timekeeper?

A No. Now, I correct that in this respect:

There were occasions when we had another clerk hired, he would keep the time and turn it over to me or make out a slip and we sent the slip to the office. There was no regular timekeeper, though.

Q And the office would make up the checks?

A Yes, sir.

Q And after they were made up at the office where would the check go, do you remember?

A The checks were sent to the dock office.

Q Is that your office?

A Yes, sir.

Q And after you got them what would you do?

A I would usually make a list of them and take the checks by the Business Agent or if a man was working in the afternoons there I would give him his check.

Q You mean if he was working on the wharf there?

A Yes.

Q Did you list also the amounts of the checks?

A The net amount.

[377] Q Did you give Mr. Morrow a copy of that list?

A Yes, sir.

Q Was that list for you or for Mr. Morrow?

Q And then if the job was over who was the one that told them, even if it were in the middle of the day, to take off?

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Vice-President.

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I was Chairman then and Vice-President.

* * * *

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A Yes, sir.

Q And after they were made up at the office where would the check go, do you remember?

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A Yes, sir.

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Q You mean if he was working on the wharf there?

A Yes.

Q Did you list also the amounts of the checks?

A The net amount.

[377] Q Did you give Mr. Morrow a copy of that list?

A Yes, sir.

Q Was that list for you or for Mr. Morrow?

A Well, I just made one list and attached it to the checks and turned it over to the Business Agent.

Q I see. So then he would know of anybody who owed him a percentage that way?

A He would know what the man's net amount was.

Q I show you part of General Counsel's Exhibit 5-A, which purports to be a notice signed by T. M. Bennett, and Ralph Massey, and ask you if you remember when that was posted out on the waterfront, or at the union hall?

A I remember something similar to this being posted. It could have been identical.

Q Well, after that notice went up did you change in any way your method of hiring extra clerks and checkers, Mr. Vestal?

A Not that I know of.

Q In other words, you continued to operate the same as you always had?

A Yes, sir. Now, you are speaking of Rice, Kerr or the Local?

Q Rice, Kerr, yes.

A That's right.

* * * *

[378] CROSS EXAMINATION

* * * *

Q (By Mr. Eikel) I say in ordering extra clerks and checkers did you get the names from the man you called, the dispatcher, I presume, you might call him, did he give you a list of names from which you could choose?

A He gave me a list of all the names that were available, I presume.

Q Well, did this list of names vary from time to time, each time you called it was different from that before?

A Yes, a lot of times when he called some of the names were not on the list the next time.

Q Did you specifically ask for any particular men that were not named at times?

A I did on occasions like I mentioned before, where there was no one there that I thought was capable of clerking, then I [379] contacted, got permission or told the Business Agent I was going to contact the other companies and try to get a qualified man.

Q In other words, if the names of the men that were read off to you by the Business Agent didn't contain the names of men whom you thought qualified you then informed — you would try to look elsewhere for men, is that right?

A I tried to get competent men for the job, yes, sir.

Q Did you pay attention to their union membership or not calling for men?

A You mean take preference over the union members? Or over non-union members?

Q Yes, when you called.

A No, I didn't because it was according to the man, whether he was competent or not. In the case I cited there, Schreiber, I don't believe he belonged to the union at the time I was trying to get him.

Q Did you know whether these names given to you were members of the union or not?

A Yes, sir, I usually knew which men belonged and which men did not.

Q That was your personal knowledge, is that right?

A That's right.

* * * *

【380】 Q But the practice followed by you as long as you have been clerk for Rice, Kerr in getting extra men was to call the hall, and then a list of the men available to work was read out to you, and you told them which ones you wanted to work for you, is that right?

A That's right.

* * * *

【381】 Q I say your knowledge of their union membership, that you say you knew usually whether they were members or not, was gained by the fact that you were a member of the union and knew most of the members in the union, is that right?

A Yes, sir, I did know which ones belonged.

Q You never inquired which people's names read out to you were members of the union when you called for them?

A No, usually when I called I knew which men belonged and which men did not belong.

* * * *

【383】 REDIRECT EXAMINATION

Q (By Mr. Whittaker) ...

* * * *

[384] Q Were you a member of the Negotiating Committee or did you sit on negotiations as President?

[385] A This past year, yes, sir.

Q Do you know anything about this membership committee?

A About what?

Q The membership committee, the committee that passes on members or investigates them.

A Yes, sir.

Q Who is it composed of?

A I don't remember all of the names right now, but there has been a committee appointed for this year.

Q Did you do the appointing?

A Yes, sir.

Q Who did you appoint as Chairman?

A I believe the Chairman is Mr. W. C. Mann.

* * * *

[387]

EXAMINATION

Q (By Trial Examiner) ...

* * * *

[389] Q Is Rice, Kerr & Company, Incorporated and Thomas Rice & Company, Incorporated the same outfit?

A They are the same. It's been changed from Thomas Rice & Company to Rice, Kerr & Company.

Q When you worked as the dock clerk it was known as Thomas Rice & Company, is that right?

A When I started and when I left it was changed to Rice, Kerr.

Q All right.

Now, when did you cease working as the dock clerk for Rice, Kerr & Company?

A I believe it was the 31st of January of '56.

Q Since 1956?

A Yes, sir.

MR. EIKEL:

31st of December?

THE WITNESS:

December, yes, sir.

Q (By Trial Examiner) Did you work for Rice, Kerr & Company throughout 1956 as their dock clerk?

[390] A Yes, sir.

* * * *

[395] Q (By Mr. Whittaker) I hand you what has been marked for identification as General Counsel's Exhibit 27, which purports —

TRIAL EXAMINER:

No, this ought to be 28. This (indicating) is 27.

[396] MR. WHITTAKER:

Let me change that. Did I put down 27 or 28?

Q (By Mr. Whittaker) Now, this is a copy that was made up in our office. Have you seen anything similar to that around the union hall?

A Yes, sir, I have.

Q When is the first time you saw one of those?

A I believe it was last year, '56.

Q Was that somewhere around July of '56?

A No, I believe it was — I believe it was much earlier than that, but I just don't remember the exact date.

Q Sometime before July 1956?

A I believe so, yes, sir.

* * * *

[397] Q (By Mr. Whittaker) Are you familiar with this last paragraph there in that document, Mr. Vestal?

* * * *

[398] Q (By Mr. Whittaker) Can you answer now, Mr. Witness?

A We have something possibly similar. Whether that is a copy of it or not I wouldn't know unless I compared it.

Q (Reading) "This is to certify that I agree to work through, and do hereby authorize and designate the ILA Local Union 1351 as the bargaining agent for me, and I further agree to pay ILA Local 1351 three per cent of my net wages as compensation for services rendered to by this Local which I agree is a reasonable charge. I hereby assign and transfer to Local Union Number 1351 said percentage of my wages."

Now, my question is this:

In your capacity as President and Vice-President and member of the Executive Board and presiding at the Local Unions, was this passed, this language passed on at any of these meetings?

A I would say at one of the meetings or not — we agreed to make a form up for the record, not for membership, and this may be identical to a form I was speaking of in 1956, this wording and all, but I notice here on file that you have a copy [399] probably that was before this was run off, and this one seems to be different; three different ones. It would have to be compared but it appears to be identical to the form that we have in our hall.

* * * *

[400] URBAN THOMAS MALANAPHY
a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) Who do you work for, Mr. Malanaphy?

A Lykes Brothers Steamship Company.

[401] Q How long have you worked for them?

A Be twelve years, I believe, this month.

Q This month. What is your present position?

A Well, I am chief clerk.

Q And how long have you held that job?

A Well, I think that's three years in June.

Q As chief clerk do you have any clerks under you?

A Yes, sir.

Q How many?

Well, first let's say monthly clerks.

A Monthly clerks at this time we only have two.

Q And do you have any guaranteed 40-hour a week clerks?

A 40 hours?

Q Yes, sir.

A Yes, sir, we do.

Q How many?

A Let's see, we have got — golly, I have got to run through that a second.

I believe it's nine. I believe that's correct.

* * * *

[402] Q At present are you working any extra clerks?

A No, not any extra clerks.

Q Any extra checkers?

A Yes, sir.

Q About how many?

A I believe about ten today.

Q What type of business is Lykes engaged in?

A Steamship business.

Q Do they act as agents for other steamship companies?

A Yes, sir.

Q Do they have their own steamships?

A Yes, sir.

Q Do they do their own stevedoring?

A. No, sir, the Southern Stevedoring Company does all Lykes Brothers' work.

Q Is it connected with Lykes in any way, a subsidiary or [403] something?

A Well, I suppose they are.

* * * *

[405] Q Do you, that is, Lykes Brothers, both load and unload ships?

A Yes, sir.

Q You receive and deliver cargo, too?

A Yes, sir.

Q And these clerks and checkers you described, that is what they do?

A Yes, sir.

Q Is that done under your supervision?

A Yes, sir.

Q Now, when you want to get an extra clerk or extra checker, how do you go about getting one?

[406] A Well, if it's for the next day we call before 7:00 o'clock to the Business Agent.

Q Who is "we"?

A Well, I say we. The Lykes Brothers. I do.

Q You do.

Now, if you wanted to put a clerk on as a guaranteed 40-hour a week clerk, who would make that decision?

A Well, between Jack Moran and myself.

Q Well, tell us how you actually decide those matters.

A Well, the way we do it is if we get a man, happen to have a man down working on one of the ships or delivering or receiving cargo, and we decide we would like to have him as a 40-hour a week man, why, we just don't ever re-

lease him, that is, he goes back, he's ordered back every day until he's told not to come.

Q Who orders him back?

A Well, I do.

Q Well, in this 40-hour guarantee, I am a little troubled by that expression, do you tell him that you are going to guarantee him 40 hours?

A Yes, sir.

Q Does Mr. Moran tell him or do you?

A Well, I usually do. Mr. Moran and I talk it over and I usually tell him.

Q And when you have a man of that type you don't call down to the hall, then, every day, do you?

【407】 A No, sir.

TRIAL EXAMINER:

Let's identify who Mr. Moran is, please,

MR. WHITTAKER:

Yes.

Q (By Mr. Whittaker) Mr. Joe Moran, who is he, please?

A He is the head man of the dock for Lykes Brothers as far as the clerks are concerned, clerks and checkers.

Q Does he have a title of wharf superintendent?

A Yes, sir, I believe he does.

Q As chief clerk what are your duties?

A Well, in the first place I get all the ships lined up, when they are going to work, who is going to work them. If it's inbound cargo, steel or pipe or anything on that order, I go through the manifests and plan, compare those, see where they match up, order the cars.

Q Order the railroad cars?

A Order the railroad cars to be brought in the next day, and the number that will be used, the total number we expect to use on the whole shipment. Appoint the man that's going to be in charge and hire or call the hall and get, if we don't have enough of our own people available there, we call the hall and get the other extra men that we need to work the ship.

Q When you put a clerk in charge of loading or unloading a ship do you call him a ship's clerk or any special title?

A No, we don't. We don't have any special type title.

Q Just clerk?

[408] A Just clerk.

Q And what authority does he have over those people who are assisting the checkers?

A Well, he is supposed to place them wherever he wants them, either in the hold or on the dock or sometimes if we have two men to a hatch, which we usually do, we send them both in the hold, depending on the kind of cargo, and he's supposed to check with them and see that they know which cargo goes in what car or which truck, the amount of pieces, and steel, of course, is marked by paint numbers. That's supposedly his. He's supposed to see that a man does his work efficiently. He is the man that is held responsible for the cargo either in or out of the ship.

Q Well, if he doesn't like the work the checkers are doing under him, what does he do about that?

A Well, if there's some reason he don't like them, we have got a man over there that's doing the work, as soon as possible we take him off of that job, maybe put another man in his place, or we put him on one of the shortest hatches where we can get rid of him quickest or maybe

even exchange a man that's better and take him off if he happens to be on a big hatch.

Q When you say shortest hatches, is that one that's about to finish up?

A That's one that will finish up the soonest, yes.

Q Now, you have used the word "we".

Would he be the one to bring this to your attention?

[409] A Yes, sir.

Q And what would he say to you?

A Well, he would tell me what was wrong, what the man was doing, wasn't doing, and I would tell him to go ahead and handle it just like he wanted to. I try not to interfere much with the fellows that's working the ship. They are right on the job. I am not out there. I am in the office. He's out there where the work is going on, and I feel he knows more about it than I do.

Q Could he call up the hall and tell Mr. Morrow to send out another checker?

A He could if he wanted to. . .

Q And he could knock the man off?

A Yes, sir.

Q What procedure do you follow when you telephone Mr. C. B. Morrow for ordering men?

A Well, I usually start off, we need so many men at such and such a dock at such and such a time, and I take it he is writing that down. When I get through with that he says all right, and I say, "What have you got?"

He starts through the list and reads off. If I want six or eight men, he might read sometimes fifteen or eighteen before when he gets through, I stop and pick them out. Other times he might read off men that, the first four or

five I might — might have been working for us and done good work and we would like to [410] have them back.

* * * *

Q Now, I believe you know Mr. Schreiber who is a clerk?

A Yes, sir.

Q Do you recall an occasion where Mr. Vestal telephoned in regard to your releasing, whether you could release Mr. Schreiber to Rice, Kerr?

A No, I don't recall any special time but oftentimes I know [411] that he has done it, and many of the other people have done it. Some man that they figured that could do their work for them better than anybody that was available, then I always let them go if it's possible, and get a man in his place.

Q Is that sort of a Common practice?

A Well, it doesn't happen where I have had to do that with other people, but I would say it would be a common practice, yes, sir.

Q Well, on such occasions do you first get Mr. Morrow's O. K. or what?

A Well, I think like if that has happened with Mr. Vestal he would probably call C. B. and ask him if that would be all right, if he would make that deal with me. I think that's probably the way that would be worked.

Q Now, who keeps the time on the clerks and checkers?

A Well, the clerk that is working the ship turns in all the time for himself and the people that he has working under him.

Q How many ships do you work at a time or can you work at a time?

A Well, we had ten the other day. That's too many, but we had them and didn't work them.

Q You say you weren't working all ten of them?

A Yes, sir. I wasn't but I was in charge of all ten of them. We had other people working them.

Q And there would be on a day like that some ten clerks would [412] turn in the time for ten different situations?

A Yes, each ten, and maybe there could be more because we might have an inbound and an outbound clerk on the same ship.

Q Now, when this time is turned in where does it go?

A They call it in to a boy that we have got down there, and by the way we pay him checker's pay, that keeps the time of all the clerks and checkers; that is, well, all the clerks and checkers, even the monthly men.

Q And does he prepare certain sheets of paper?

A No, he makes out time tickets for each man on each individual ship.

Q And do you O. K. that?

A Well, I don't ordinarily. Mr. Moran ordinarily does that. I do it when he's not there.

Q After they are O. K.'d where do these particular tickets go?

A We send them up to the Lykes Brothers office in the Cotton Exchange.

Q Is that where they prepare the checks?

A That is where all the clerks' and checkers' checks are made, yes, sir.

Q And after they are prepared up there what happens to them?

A Well, then they mail the checks and a list of the amounts, the gross, all the take-offs and the net, and mail that, the checks and a sheet of that, down to the Business Agent in the hall and mail us a copy.

[413] Q Well, what about the monthly men, do their checks go to the hall?

A No, the monthly men come direct to the office.

Q Do you know how Mr. Morrow receives word as to the amounts of the monthly checks?

A Yes, sir. The way he receives mine, I am sure the others are probably done the same way, I tear off the two stubs, write him a check and send them over to him. There's one stub on each check. We get an overtime check and a monthly draw. We get an overtime check twice a month and a monthly check twice a month, and we pay ours on the 15th and the 1st.

■ * * *

[414] Q Are you a member of Local 1351?

A Yes, sir.

Q How long have you been a member?

A I think since 1936.

Q Have you held any office in the Local?

[415] A I was on the Executive Board a time or two, I believe.

Q Do you remember when this was?

A That I was on the Executive Board?

Q Yes, sir.

A I was on last year.

Q And have you been on any other years?

A Yes, I was on maybe two or three years ago. I just don't remember which year it was.

Q Either '55 or '54?

A I think '54, I believe.

Q Well, as a member of the Executive Board what did you do?

A Well, we used to have Executive Board meetings before the regular meeting the second Wednesday of the month, and we would just talk over the affairs of the Local, the things that had happened, things we hoped would happen. That would last half or three-quarters of an hour before the meeting.

Q Have you ever been on the Membership Committee?

A I believe I was year before last.

Q Be 1954?

A No, '55.

Q '55.

Were you just a member or were you the Chairman?

A I was just a member.

Q How did you handle applications or letters for membership?

A Well, we went through — I remember we went through the [416] letters pretty carefully. There was quite a group on that Membership Committee. And I would talk about the people that we thought could do good work for Lykes, maybe the people that I thought were good people to do our work didn't suit some of the other people that were in charge of hiring the people. Is all we could do is recommend — well, with me, I recommended the people that I thought was the most capable of doing the kind of work that we had to do down there.

Q Then would the Membership Committee vote on these recommendations before taking it to the general membership?

A I believe that we brought the recommendations to the Local. I think maybe at that time we brought, oh, an awful big bunch of names in there, as I remember. Like I say, one of them would suit me and wouldn't suit somebody else. We all seemed to be in favor of taking people in the Local, wanting to get new members.

Q Well, how many votes does it take to get in the Local?

A Well, I don't know. The way we took them in last year it seemed like we would take in the high twenty or twenty-five people on the list.

Q How would they get high on the list, Mr. Malanaphy?

A Well, from the number of — I mean we put all the names, maybe 50 or 75 names, on a list, and then group, the group vote for the high 25 in votes, and the high 25, maybe, would come in the Local.

[417] Q If you had 75 on the list how many votes would each member have?

A Well, that would depend on how many people were at the meeting.

Q Yes, sir.

But of each person attending the meeting —

A He could vote one, if we decided to take in ten men, he could have one vote for each man, each of ten men.

Q Well, who would decide that you were only going to take in ten at the meeting?

A Well, somebody get up and make a motion that we take in so many members. Some other fellow might say, "Well, that's too many, let's cut it down to fifteen," or something like that. Whichever carried we would take in that many.

* * * *

[418] Q Have you ever hired a clerk or checker except through Local 1351?

A No.

Q Well, if a man wanted to become a clerk or checker and work on the waterfront for Lykes Brothers how would he go about getting the job?

A Well, we have that happen very often. They come over and talk to us over at Long Reach 5 and say they would like to go down on the dock.

Q By "us" is that you or Mr. Moran?

A Sir?

Q Is that you or Mr. Moran?

A That is usually me because Mr. Moran doesn't belong to the Local.

Q I see.

A Of course they do sometimes talk to him, too. And we tell them to go over and get his name on the board and as quick as we had a place we could use him, well, we would call him by name and get him over there and get him some work.

* * * *

[419] Q Well, would you call Mr. Morrow and tell him you were sending this man over?

A I have done that. I have told him a certain man, so and so, was coming over to see him, and like to have him talk to him.

Q Would you sort of give him a character reference?

A Well, I think that wasn't really necessary. I don't know that I have done that because I believe that he would understand that I wouldn't send anybody over there that

I wasn't fairly sure of that would be a fairly good man for us.

Q I see.

If he didn't make the list over there would you hire him?

A Sir?

Q I said if he didn't make the list over at the hall would you hire him?

A No, I never have.

* * * *

[420]

CROSS EXAMINATION

* * * *

[421] Q (By Mr. Crystal) How many clerks are you working right now?

A You mean today?

Q Yes.

A Well, I think there's nine that I mentioned awhile ago was the correct number.

Q Is that the total number?

A No, it's not the total number. That's —

Q I understood you to say you had nine hourly clerks.

A Nine 40-hours. We have two monthly men besides myself.

Q That would be nine, two is eleven, and one is twelve?

A Yes, sir, and then we have the man in the office, not as a clerk or checker, he gets clerk's pay, the man that handles the papers on the inbound department, and then the time-keeper I mentioned a moment ago.

[422] Q How many of that group are non-union?

A Well, let's see, four, I believe it is.

Q That includes you?

A Four out of that group are non-union.

* * * *

[424]

EXAMINATION

Q (By Trial Examiner) . . .

* * * *

Q Do you have any extra board men working today?

A Yes, sir.

Q How did you get them? First of all, when did you get them? When did you call for them?

A Well, let me see, I would have to stop and think about that.

[425] I think we have got two men over at City Dock 1 that's been working, I believe, a week ago Monday, a week ago today they started, or —

Q All right, let's take those two men so I can get procedure straight.

After you determined you needed two extra men for that particular job, what did you do?

A I called the Business Agent.

Q That would be Mr. Morrow?

A Yes, sir.

Q And you talked to him?

A Yes, sir.

Q You called him on the telephone?

A Yes, sir.

Q And what did you tell him?

A Told him I needed so many men over at such and such a place at such a time.

Q All right.

And what is the next thing that happened?

A Well, he would get that down and I said "Who have you got?" And he would start off the list of names that he had of people, and I would pick out the people that we would be satisfied with until I got enough.

* * * *

[428] REDIRECT EXAMINATION

Q (By Mr. Whittaker) Since those notices went up down there in 1955, around June or July and August, in regard to settlement of the previous charges, did you change in any respect your ways of hiring from Local 1351?

A No, sir, I have never changed in any way, shape or manner.

* * * *

[436] HERRICK VESTAL
recalled as a witness by and on behalf of General Counsel,
having been previously sworn, was examined and testified
as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) Mr. Vestal, pursuant to my request you have there in your hand an application form that is used [437] in your Local 1351, which is marked General Counsel's Exhibit for identification 28.

A We have this form, yes, sir.

Q Will you tell us now when the local first started using that to the best of your memory?

A The best I remember it was sometime during '56, possibly the earlier part.

Q And who signed that or who would fill it out and sign it?

A Everyone that belongs to the union or didn't belong or new people, let's say, that came by the union, would fill one out.

Q Well, in other words, non-members also filled one out?

A Yes, sir, everyone.

Q Well, now, what about these people that worked out of Local 1330 and 1270? I believe that's the right numbers. Did they fill them out?

A Well, I am sure that they have. ...

* * * *

[439]

CROSS EXAMINATION

Q (By Mr. Eikel) Everybody you say worked out of the hall filled one of those applications out, is that correct, sir?

A As far as I know. We are still in the process of possibly a few that haven't, but we are still trying to see

that everyone that works through the hall either has filled one out or will fill one out.

* * * *

[440]

(The document heretofore marked General Counsel's Exhibit No. 28 for identification was received in evidence.)

* * * *

CHARLES CURTIS STEINER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) Where do you live, Mr. Steiner?

A 1319 Sulphur.

Q In Houston?

A In Houston.

Q And who do you work for?

A Strachan Shipping Company.

Q And in what capacity?

A Chief clerk.

Q And how long have you been chief clerk for Strachan Shipping Company?

A Twelve years.

* * * *

[441] Q Are you a member of Local 1351?

A I am, yes.

Q How long have you been a member?

A Oh, eight or ten years, something like that. I wouldn't know exactly. Ten years, I guess. Yes, ten years.

Q Well, were you a member as long as you have been chief clerk?

A I have been, yes.

Q Now, what type of business is Strachan Shipping Company engaged in?

A They are agents for approximately seventeen foreign steamship lines, and stevedores for the same.

* * * *

[443] Q Who looks after the checkers?

A We employ no checkers. Everybody I employ as a clerk, is paid a clerk's wages.

Q How long have you enjoyed that custom?

A Ever since I have been a chief clerk, ten years. They give me the privilege of calling whoever I want out of the hall by name.

Q Yes, sir.

A I pay the additional money.

Q The clerk's rate rather than the checker's rate?

A That's right, rather than the checker's rate.

Q During the past six months about how many extra men have you had occasion to order out of the hall?

A I have increased my staff to such an extent that at very few times do I ever have to go out of my own organization to pick up anybody. I would say that the last six months **[444]** I haven't employed more than a total of twenty-five.

Q What was your situation in 1955?

A '55 I did have to go out quite often, and try to use the regular procedure in getting people out of Local 1351.

Q And what is the regular procedure?

A Call the hall and ask Mr. Morrow to call the roll and tell me who he had available, and from those available I selected the man of my choice to fill each job.

Q Did you always wait for him to finish calling the roll?

A No, I did not. When he called the name of a man who in my opinion was capable of taking care of the job that I had for him, I immediately employed that man.

Q Well, do you know G. R. Vinson?

A I do.

Q Did he work for you back in 1955?

A I don't know to say for sure, I do not know.

Q Or 1954?

A I think he worked for me in '54, yes.

Q Did you order him out of the hall by name?

A I did.

Q What kind of work did you give him?

A The only work that Mr. Vinson has ever done for me has been segregating cargo and perhaps on a very few instances he may have delivered some cargo for me.

Q Well, how was his work in segregating cargo? Was it [445] satisfactory?

A It was, yes.

Q Did you consider using him or would you consider using him today if you had cargo to be segregated, if you needed someone?

A I had no fault to find with the man's work. It was just that the work he was employed for at that time is not a part of our work at the present time.

Q Yes, sir.

A At that time we were agents for Lloyd Brasillero, which handled a lot of coffee. The amount of coffee that we handle now is really of no consequence, and very, very few times have I ever had to go out of my own organization to take care of it.

Q Yes, sir.

Do you know Frank Linnenberg?

A I do.

Q Has he worked for you?

A He has.

Q Do you recall the last time approximately when he worked for you?

A I would say in '54 or '55, early part of '55. I wouldn't be able to say exactly.

Q Yes, sir.

Did you order him out of the hall by name?

A Oh, always every man I have ordered out of the hall I [446] have ordered by name.

Q Do you recall what kind of work you had him do for you?

A I had him working on inbound cargo and making deliveries of inbound cargo. At various times he's worked down in the hold of the ship taking exceptions on automobiles, and that and general checking work is what he's done, and some clerical work on delivery.

Q You say you have worked him in the hold?

A I have, yes, but that's been sometime ago. Mr. Linnenberg never did want to work in the hold. He went down there in a case of extreme necessity. He did not want to work in the hold.

Q Now, in connection with your duties in regard to

inbound cargo before this job was split up back in 1954 and '55, what did you do?

A I hired the labor to take care of it, that is, I hired the clerical staff, and assigned the work to the various people, and then after the work was done went over their papers to see that it was done correctly. And I kept a duplicate record of everything that he did in order to make a complete record of the manifest before those papers were sent on to our main office.

Q You kept a complete record of what?

A Of all the deliveries that were made so that when all the cargo was delivered from the dock, all of the necessary [447] papers to accompany those deliveries were in my hand, audited by me, and then in turn sent to the main office.

Q Did you keep the time of the clerks?

A At that time I did, yes.

Q And did you approve that time so they could be paid?

A I did.

Q Now, when a ship was coming in did you get an advance manifest or cargo plan?

A That's correct.

Q Was that the basis upon which you determined how many people you would need?

A That in conjunction with the cargo plan of the ship determining how many hatches of cargo was distributed, the type of cargo, which in turn determined the number of people you had to use.

Q And who made the decision as to how many?

A I did.

Q Now, as for outbound cargo is it much the same procedure?

A In reverse, yes. . . .

* * * *

[452] Q Now, getting back to the approval of the payroll, after you approve the time what happens to the time tickets or whatever you call them?

A The time tickets are O. K.'d by me and then sent to our office, 601 Cotton Exchange Building, for auditing and payment.

Q Are their checks made up there?

A They were at that time. They are not now. They are made by oh, this outfit —

Q Master Stevedores?

A Made by — IBM does the work and all checks are signed by Master Stevedores.

Q When did you start using Master Stevedores?

A Well, I have no control over that. You will have to talk to the downtown office on that. My procedure is exactly the same as it always has been.

[453] I take the ticket and approve it and send it up to them. Now, what time they started I do not know.

Q Well, where do you pick up your check?

A My check is sent down to me from Strachan Shipping Company. It's signed by Strachan. It's not a Master Stevedores' check. My check is not.

Q Well, what about Mr. Hardy's check?

A Hardy's check is the same as mine.

Q And the 40-hour guarantee checks, the 40-hour guarantee clerks' checks?

A Forty-hour guarantee clerks are paid through IBM.

Q How do you remit your percentage to Local 1351?

A Just the same way as they all do. There's two checks involved. They are both made out to me and I — no, not on mine. Mine is a cash proposition entirely. I just made a mistake there. I get one check, of which this is the stub (indicating).

It tells the gross earnings and this is the way my percentage was made up for the last payment right there (indicating).

Q Yes, sir.

And do you keep this stub or do you send it on to Mr. Morrow?

A No, that stub is kept in my possession. I show him the stub.

[454] Q Yes.

A In order that he can verify the amount of money that I made.

Q Yes, sir.

Do you send him a check?

A No.

Q You pay cash?

A I pay cash.

Q Do you go by the union hall very often?

A About every meeting, and between pay day and eight days after pay day I go by there. I do stop in there frequently just to pass the time of day. I don't have too much business over there. I do most of it over the telephone.

Q Are you at present an officer of Local 1351?

A No, not this year. I was relieved January 1 this year. I have been in the past.

Q What offices have you held in the Local?

A The only office I have ever held is as a member of the Executive Board and also I have served on several contract committees.

Q How long were you a member of the Executive Board?

A Oh, I would say six or eight years. Six years, I guess.

Q And how far back have you been a member of the Contract Committee or Negotiating Committee?

A Oh, about the same time.

[455] Q Are you at present a member of the Negotiating Committee?

A I am not.

Q Have you been on the Membership Committee?

A I have not.

Q Well, as a member of the Executive Board have you had occasions to meet with the steamship agencies?

A At various times, yes.

* * * *

[457] Q (By Mr. Whittaker) All right, let me ask you this:

For what reason would the Executive Board meet with a steamship company?

A Well, to my knowledge at no time has the complete Executive Board ever met with a steamship company. Certain members of the Executive Board have gone down and talked over controversial issues with the steamship companies or with the Maritime Association for the better-

ment of both parties. Now, you mentioned the Isthmian business —

* * * *

[459] Q Was it in the spring of '56?

A I know I went to a meeting with Isthmian at one time but as far as even telling the year it is, I think it was last year, yes, but as far as being specific, I can't, but I do know that I went to a meeting with Isthmian Steamship Company. Whether it's that meeting that you are referring to or not, I can't possibly identify it. I don't know.

Q Well, what was the issue involved in this meeting?

A The issue that was involved was we were not satisfied, that is, the local, was not satisfied with the type of a job that we were able to perform for Isthmian Steamship Company with the number of people that Isthmian Steamship Company asked us to employ.

In other words, we were ashamed of the jobs we were putting out, and we figured that the only way that we could do the job that was satisfactory was if Isthmian would employ more help to do the job.

* * * *

[460] Q (By Mr. Whittaker) And did Isthmian agree to later on employ more people?

A I wouldn't say. I don't know. I have heard that they did but as far as having any actual knowledge of it I don't know.

Q Well, did you hear that down at the Union hall?

MR. CRYSTAL:

We are going to object to any hearsay testimony.

Q (By Mr. Whittaker) Was that at the union hall where you gained that knowledge?

TRIAL EXAMINER:

Wait a minute. What about his objection, what he heard?

MR. WHITTAKER:

I am asking him now where he heard it. It's union business. If it came from the president of the union that is first-hand information, the same as a business is entitled to relate matters as an exception to the hearsay rule. It applies to the internal affairs of the union.

TRIAL EXAMINER:

Go ahead and answer where you heard it.

A There on the waterfront, around in the vicinity where I work. Possibly from the people that I work with or possibly I heard it from Mr. Morrow or somebody else. I don't know.

* * * *

[466] Q Now, calling your attention to the posting of notices on the waterfront at the union hall, beginning sometime in, I believe, around June of 1955, do you recall that?

A Yes, I posted three notices.

Q Well, after those notices were posted did you change your way of hiring and selecting your men?

A I have never changed my way of hiring and selecting my men. I use the same as I used ten years ago. I have never changed.

Q Well, did you change any of your operations after the notices were posted?

[467] A I didn't change any.

Q In selecting the 40-hour guaranteed man who makes the decision?

A Forty-hour a week guaranteed man?

Q Yes, sir.

A I do.

Q Captain Scully doesn't participate?

A No.

MR. DOWD:

Your Honor, I object to this as repetitious. I believe the witness testified previously that he does all of that, all the hiring.

TRIAL EXAMINER:

The record may stand.

Q (By Mr. Whittaker) In regard to this monthly clerk, Mr. Hardy, did you participate in his hiring?

A I did. I hired him and recommended he be put on a monthly salary.

Q And who had to approve the recommendation?

A Mr. Lewis Homburg.

Q He is the president of Strachan?

A He is the local manager of Strachan.

Q Local manager.

Did you receive a refund from the Avenue N Corporation about November of 19 — I don't say refund, just say you received some money from Avenue N Corporation about November of 1955 — '56. Excuse me.

[468] A Well, let's see, I received a refund on some

dues. I did receive a refund of some kind. I don't know — but I did get some money, yes.

Q Was it a hundred dollars?

A I think it was, I am not sure, but I think it was, yes.

Q Well, did you participate as a member or as an officer in deciding that you as well as others should get a hundred dollars?

A I participated as a member.

Q As a member of Local 1351 or as a member of Avenue N Building Corporation?

A Avenue N.

Q Do you own stock in Avenue N?

A I did.

Q Do you not own any now?

A If I remember rightly all of the stock of Avenue N is owned by 1351.

* * * *

[472]

CROSS EXAMINATION

Q (By Mr. Crystal) Mr. Steiner, I believe you testified that Mr. Linnenberg worked in the hold a long time ago for you at one time?

A That's right, previous to 1954 or possibly early in 1954.

Q And you did work Mr. Vinson in '55 and you also worked him in '54?

A Yes, segregating coffee at the time we had a large coffee business.

Q Yes, sir.

Now, did you ever refuse to hire Vinson or Linnenberg because of their membership or non-membership in the union?

A I never have refused to hire them for any reason outside of possibly in my own opinion they were not capable of handling the job that I had to do at a specific time.

* * * *

[474] Q Now, what about '56, how many hourly men did you have in '56?

[475] A My total staff was increased to sixteen.

Q Sixteen hourly men in '56.

A No, the total staff.

Q Oh, the total staff.

A Was increased to sixteen.

Q How many of those were hourly men?

A Of which two of those were monthly.

Q That leaves fourteen hourly, right?

A Right.

Q Fourteen hourly and two monthly in '56.

Of those fourteen how many are union and how many are non-union?

A Let's see, I would say eight union and six non-union.

Q There's eight union and six non?

A No, sir, I would like to say of those that I had non-union in '55 became union members in '55. I have the same men that I had — the same men that were non-union in '55 were union men in '56.

Q I see.

Now, these two monthly men in '56, are they both union?

A They are. That's myself and Hardy.

Q Now, what about this year?

A This year? It's about the same as it was last year.

* * * *

[482]

EXAMINATION

Q (By Trial Examiner) Mr. Steiner, a little while ago if I understood you correctly you said that occasionally you borrow people from neighboring concerns, such as Lykes Brothers, for short periods of time.

A That's right, yes, sir.

Q Now, for the moment set that kind of a person aside; those are the ones my next series of questions will be directed to.

During 1954 did the people that you hired all come through the union hiring hall or did some of them come from other places?

[483] A Every person that I hired I hired through 1351.

Q That is true in '55 and '56?

A And '57.

Q And up through '57, is that right?

A That's right.

Q So that all the people you had during those years, whether they were monthly or hourly, originally came through the hiring hall?

A That's right, except —

Q Except for these occasional people you borrowed, of course.

A Well, they were also members of the local or work-

ing through the local, and I actually hired them through the local with the local's consent.

* * * *

[500] **GEORGE FRANCIS WILLIAMS**
a witness called by and on behalf of the General Counsel,
being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) . . .

* * * *

Q Who is your employer?

A Biehl & Company.

Q What position do you hold with them?

A Chief clerk on the dock.

Q And how long have you held that position?

A About eight years.

* * * *

Q Are you a member of Local 1351?

[501] **A** I am.

Q How long have you been a member?

A About ten years.

* * * *

Q What is the nature of the business of Biehl & Company?

A They are steamship agents for various foreign lines and they supply the cargo and we load it on the ships, check it on the ships.

* * * *

[502] Q Now, as chief clerk what are your duties in regard to loading or unloading ships?

A I supervise the other clerks and look after general conditions on the dock for the steamship company.

Q Do you order men from Local 1351?

A Well, in that statement I made I said I always did but that isn't right. I have had an assistant on the north side of the channel and an assistant on the south side of the channel, and under some conditions these men have to order checkers.

* * * *

[503] Q . . . Well, who decides how many men you are going to have to work a ship?

A Well, in most cases I do, but as I say, if I am not there they use their own judgment.

* * * *

Q Well, whether you are ordering or your assistant on the north side or Mr. Andersen on the south side is ordering, are they always ordered from Local 1351?

A Yes, sir.

Q Back in 1954 and '55 did you order any checkers, Mr. Williams?

A Yes.

Q What was your procedure for ordering checkers?

A We call the business agent at the hall and ask him what men he had available and we select the ones we thought capable of doing the jobs that they were wanted for, men that we had used before very often because they were experienced and knew the type of work we had on our ships.

Q I wasn't talking about ordering clerks now.

A No, checkers, too.

Q Did you pay the clerk's rate?

A Yes, sir.

【504】 Q To the checkers?

A Yes, sir.

Q In 1954?

A Yes, sir.

* * * *

【505】 A Well, I see they are doing the job and I go around and supervise them.

Q Can you discharge them?

A Yes, sir, if they don't do their work right I can discharge them.

【506】 Q Is that true of checkers whenever you have checkers working for you?

A Yes, sir.

Q Do you keep the time on the clerks and checkers working for you?

A No, sir, the timekeeper for the stevedoring company does that on the checkers.

Q Do you approve of the time?

A Yes, the clerk in charge of the ship turns the time in to the timekeeper. He just does the clerical work.

Q And how does it come into your hands?

A You mean the time?

Q Yes, sir, uh-huh, the time tickets or whatever you call them.

A Well, the timekeeper makes the tickets out and we check them over and they go into our office, to Biehl & Company's office, and they make the checks out. It's done just as a courtesy by the stevedore timekeeper.

Q Yes.

Do you approve of them, though?

A Yes, sir.

* * * *

【507】 Q Now, do you use the IBM services of MSAT?

A No, not on the clerks and checkers. The steamship companies make out individual checks in the steamship companies' office in the Cotton Exchange, and send them down to the hall where Mr. Morrow sees the men get them.

Q Where do you get your check, sir?

A They are mailed down to Long Reach for all the salaried employees of the company.

Q And how do you pay your percentage to the local, to 1351?

A We go over to the hall to pay it. We have stubs we show the business agent.

Q Do you ever send it in by check?

A No, sir, we always pay in cash. At least I do. I don't know what the other members do.

* * * *

[512] **THOMAS ELMER STARR**
a witness called by and on behalf of the General Counsel,
[513] being first duly sworn, was examined and testified
as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) Where do you live, Mr. Starr?
A 1106 Oak Meadows.
Q And who do you work for?
A William Parr & Company.
Q And what is your position with them?
A Clerk.
Q Are you on a salary?
A Yes, sir.

* * * *

Q Are you a member of the Steamship Clerks and
Checkers Union Local 1351?
A Yes, sir.
Q How long have you been a member?
A Since 1941.

* * * *

[514] **Q** How do you pay your percentage payments?
A At the —
Q Union hall?
A Union hall, yes, sir.
Q Do you pay in cash or by check?

A Check.

Q How often do you go to the hall and make that payment?

A Twice a month.

Q Is that twice a month?

A Yes.

Q Now, what business is William Parr & Company in?

A They are agents for foreign steamship lines, export only.

Q Do they do stevedoring work?

A Yes, sir.

Q Is that done through Texas Contracting Company?

A Texas Contracting Company.

Q A subsidiary?

A Yes, sir.

Q And do you have occasion to order extra clerks and [515] checkers and timekeepers?

A Timekeepers, yes, sir.

Q Do you order extra clerks on occasion?

A Occasionally.

* * * *

Q Now, when you ordered a timekeeper how did you order him?

A By calling in the local and telling them —

Q Who did you talk to?

A Mr. Morrow, ask him for a timekeeper. He gave me who he had available. I picked out the one that I wanted or figured that had the best qualifications.

Q And, now, what authority do you have over discharging timekeepers?

A Well, I have never discharged one. I wouldn't know.
 [516] I could if they were —

Q I guess you do let him know when his job is over, though?

A Oh, yes, when the ship is finished.

Q Now, do you recall certain notices having been posted down on the waterfront back in June and July of 1955?

A I remember some papers but what was in them I have no idea.

Q Well, did you change your operations in respect to calling clerks and checkers or timekeepers from what they were prior to that?

A No, sir.

* * * *

Q Well, how does the time get up to the front office?

A We mail it through the dock messenger service.

Q And are the checks made up there?

A I don't know. I believe that the timekeepers through IBM, but I am not sure.

Q If it's made through IBM that would be Master Stevedores Association of Texas?

A I suppose so.

Q Did you receive a hundred dollars from Avenue N [517] Corporation back sometime around November of 1956?

A Yes, sir.

Q Did you also receive a refund of some six months of percentage payments during about that same time?

MR. CRYSTAL:

From whom? Just a minute.

TRIAL EXAMINER:

From whom?

Q (By Mr. Whittaker) From Local 1351.

A Yes, sir.

* * * *

CROSS EXAMINATION

Q (By Mr. Crystal) This money you are talking about receiving, you say you received a hundred dollars from Avenue N. Wasn't that in November of 1955?

A I suppose so.

Q And did you get the percentage from 1351, that refund, about the same time?

A Yes, sir.

MR. WHITTAKER:

Thank you.

Q (By Mr. Crystal) Now, as I understand your testimony you order these men by name?

A Yes, sir.

Q In other words, Morrow called off the names of the men [518] that he had available for your particular job?

A That's right.

Q And then you picked out the men you thought most experienced and most capable of doing your work?

A That's right.

* * * *

[522]

EXAMINATION

Q (By Trial Examiner) This refund that you got from 1351, I think you called it a percentage refund, do you know who got that?

A What do you mean who got that?

Q Well, from your answer I take it there was a refund made by Local 1351 of percentages that had been paid in by various people. Do you know whether everybody that paid in a percentage got the refund or only some of them?

A I am sure that everybody did.

Q Everybody that had paid a percentage during whatever period of time was covered got a refund of the percentage that was paid in or a portion of it?

A Yes, sir.

Q Now, do you know what this hundred dollars that you got from the Avenue N Corporation represented?

A I suppose it was a dividend or —

Q Well, do you know?

A No, I don't exactly.

* * * *

[523] RECROSS EXAMINATION (Cont'd.)

Q (By Mr. Crystal) This percentage refund was made to everybody that had paid percentages for a certain period, wasn't it?

A I believe so, yes, sir.

Q And the non-union men got the refund just as well as union men?

A Yes, sir.

* * * *

[524] CHARLIE LEROY COLMER
a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) . . .

* * * *

Q Who do you work for?

A States Marine-Isthmian Agency, formerly States Marine of Delaware. They bought those Isthmian ships and transferred us over to this other payroll.

Q I see.

And what position do you hold now?

A Chief clerk.

Q Is that the same position you formerly held under States Marine of Delaware?

A Yes, sir.

Q How long have you been chief clerk?

A Well, I was the only man working for them for about five [525] years and then since then there's three more

regularly employed besides myself on a monthly salary, so I would say the last seven years.

* * * *

Q Are you a member of the Clerks and Checkers Local 1351?

A Yes, sir.

Q How long have you been a member of it?

A I would say for the last, offhand, for about fifteen years. That is purely a guess.

Q Yes, sir.

Have you held any office?

A No, sir.

Q How do you pay your percentage?

A I carry a stub of my earnings up there and I pay three per cent of the net.

Q Where is up there?

A Up to the Local, at the union headquarters.

* * * *

[526] Q I am sorry, I don't understand the name of your new company. What is it?

A States Marine-Isthmian Agency.

Q States Marine-Isthmian Agency.

Well, speaking of the old company, States Marine Corporation, what sort of business was it engaged in?

A Well, it's the same business that they are engaged in now, steamship business.

The only thing is when they bought these Isthmian ships, I don't know when it was, they just formed a new company and called it States Marine-Isthmian Agency. They might still be States Marine of Delaware, but they transferred at least their dock personnel over to States Marine-Isthmian Agency.

Q Thank you.

[527] Do you do stevedoring work for ships other than the Isthmian ships?

A I don't — I am not connected with the stevedore. That is a separate —

Q I mean the company.

A Oh, yeah, the same stevedore does the stevedoring.

Q Who is the stevedore?

A United Stevedoring Corporation.

Q Is that any relation to the States Marine-Isthmian Agency?

A Well, it's States Marine-Isthmian Agency stevedore. In other words, I don't think it's a contract stevedore. I believe it's just purely the own company's stevedore.

* * * *

[528] Q Well, as chief clerk what have your duties been in regard to these ships?

A Well, I receive the cargo, a lot of chief clerks don't do anything but supervise, but I am what you call a working chief clerk. In other words, I still work, but then I have the responsibility of seeing that capable men are hired, if any are hired, extra, above the ones that's regularly employed.

And I receive the cargo on the dock and then when the ship comes in I give it out to the longshoremen for loading on the ship at the stevedore's direction.

In other words, the stevedore tells me where he wants a certain commodity and how much, and then it's my duty to give it to the longshoreman on the dock.

Q Are there any other clerks on the payroll besides yourself?

A Three.

Q Are they monthly or —

A Monthly. There was two and then we — I think November the 1st we hired another one.

Q Now, do you supervise those three also?

A Yes, sir.

Q When extras are ordered, extra men are ordered from Local 1351, do you do the ordering or do they?

[529] A Well, over on the other side there is a fellow by the name of Goka that handles some pineapple coming off of the ships. Most of the time he does his own ordering for his checkers over there.

TRIAL EXAMINER:

Other side of what?

THE WITNESS:

On the north side of the ship channel.

TRIAL EXAMINER:

Thank you.

Q (By Mr. Whittaker) Does he order in the same way you do on this side?

A Yes, sir, as far as I know he does, yes, sir.

Q And when you order checkers what is the procedure you go through?

A Well, I call C. B. and I will say, "C. B., I need a couple of checkers to work down in the hatch checking steel," or, you know, checking boxes or whatever it might be.

Anyhow, just some checkers down in the hatch. And he will, lots of times, will go down, list the names, and name off a bunch of men.

I will say, "Well, O.K., just —" He will name them off, and I will say "O.K., send me three" or whatever amount I need.

Q Well, do you call them out by name or do you just let him —

A No, I don't call them by name. I just say "Send me three checkers that can work in a hatch," or "one checker," something like that, how many ever I need.

Q And you pay them the checker's rate, then?

[530] A That's right.

Q Does Mr. Goka do the same thing on the north side?

A Yes, sir.

Q Do you get your timekeepers the same way?

A Order timekeepers by name.

Q By name?

A Because I try to pick the timekeepers that's familiar with that particular stevedore's system. Each stevedore has a different system, and you always try to pick a man that has kept time for you before, so he will be more or less familiar with that stevedore's system.

TRIAL EXAMINER:

Excuse me, sir. A moment ago you referred to C. B. Were you talking about C. B. Morrow, the Business Agent?

THE WITNESS:

C. B. Morrow, yes, sir.

* * * *

[531] Q Now, do you recall when some NLRB notices were posted down around the docks and the union hall?

A Yes, sir.

Q Back in June of 1955 and a few months thereafter.

Did you change your system of hiring employees after those notices were posted?

A No, because I never did order by name. I understood that that was to, you know, that you couldn't order by name.

Q Unless you paid the clerk's rate.

A Well, I know at one time, I believe, that to order a checker by name you did pay him a differential, the clerk's rate, but since, I believe, since those notices went out that has been discontinued, and I have never did order by name, anyhow, so I didn't have any reason to change my —

Q I see.

[532] Q How are the men from Local 1351 paid?

A Well, the monthly — well, I can only say for myself, now, and the extra men that we might have. The stevedore pays the extra timekeepers and checkers, and then I imagine he bills the steamship company and is reimbursed.

Now, I am paid personally out of New York by check twice a month, but any extra man is paid by the stevedore.

Q United Stevedoring Corporation, do you know whether it uses that IBM system of MS —

A They do use it.

Q Master Stevedores Association of Texas.

Back in sometime around in November 1955 did you receive a hundred dollars from the Avenue N Building Corporation?

A Yes, sir.

Q At that time did you receive another check for percentage payments paid into the Local six months prior to November 1, 1955?

A Yes, sir.

* * * *

[539]

EXAMINATION

Q (By Trial Examiner) This hundred dollars you got from Avenue N, do you know what you got it for?

A As a stockholder.

Q Do you know what the hundred dollars represents?

A Dividends, payment of dividends from being a stockholder in Avenue N Corporation.

Q This percentage refund you got from Local 1351, do you know who received that refund?

A I understand everybody received it.

Q Both union and non-union?

A Yes, sir.

Q Everybody that paid a percentage fee, is that right?

A Yes, sir.

* * * *

[540] REDIRECT EXAMINATION (Cont'd.)

Q (By Mr. Whittaker) How did you get that hundred dollars?

MR. CRYSTAL:

Wait a minute.

Q (By Mr. Whittaker) In an envelope?

MR. CRYSTAL:

Just a minute. I don't think it makes any difference how he got it. He admitted he got it, testified he got it.

TRIAL EXAMINER:

Well, I take it this is preliminary. I am going to hold your objection under advisement.

Q (By Mr. Whittaker) In an envelope, is that the way you received it?

A No, I don't believe I received it in an envelope. The best I remember I believe I received a check.

Q Along with your percentage check?

A Yes, sir.

* * * *

[542] TRIAL EXAMINER:

Do you know what group of people received this hundred dollars from Avenue N?

THE WITNESS:

Just the members of Avenue N Corporation is all I know. Now, who all is members I don't know. All I know is I was a member.

MR. CRYSTAL:

You mean member or stockholder?

THE WITNESS:

I mean a stockholder.

* * * *

[543]

WILLIAM A. KEITHER

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) ...

* * * *

Q Who do you work for?

A Waterman Steamship Corporation.

Q And how long have you worked for them?

A Approximately eight years.

[544] Q What is your present position?

A Wharf superintendent.

Q How long have you been wharf superintendent?

A Approximately eight years.

Q Are you a member of the Clerks and Checkers Local 1351?

A Yes, I am.

Q How long have you been a member?

A Since 1944.

Q Do you pay them a percentage of your wages?

A Yes, I do.

Q How do you pay that?

A I pay it semi-monthly. That's on the basis of which I get paid from the Waterman Corporation out of Mobile, Alabama. The checks are made from there.

Q Yes, sir.

Do you go by the hall or do you mail it in?

A I go by the hall sometimes, and I mail it in. I have paid it by check for the past three or four years.

Q Have you held any offices in the Local?

A Never have.

* * * *

Q Do you attend meetings?

[545] A Yes, I do occasionally. However, a lot of times we don't have that many ships and it happens to be that there might be work going on the night that they have a meeting and as superintendent I handle the stowage and I can't leave.

Q What type of work does Waterman Steamship Corporation engage in?

A Well, they load and discharge deep sea ships.

Q Now, are they owners of ships?

A Yes, they have a fleet of approximately — well, they did have about 69, but with their subsidiary, Pan-Atlantic Steamship Corporation, who I also handle their loading and discharging, I think they have about 39 or 40 now.

Q Do they act as agents for any other companies?

A One company, the Robin Line, and they have about two ships a year here in Houston to load grain.

Q Does Waterman do its own stevedoring?

A No, Southern Stevedoring and Contracting Company does our work.

Q Well, are they a subsidiary of Waterman?

A No, they are not. It's a privately owned company by Mr. Benjamin Harris.

■ * * *

[546] Q Do you on occasion have to order extra clerks and checkers, timekeepers?

A I haven't ordered a checker in six years, but I do order clerks every time I work a ship.

In fact I don't work ships. I serve as their superintendent and I hire a clerk to do the work and supervise him.

Q And when you hire this clerk what is your procedure for hiring him?

A Well, my procedure is to call up C. B. Morrow and ask him who he has got on his list that's qualified and capable of clerking a ship because the type of ships that we have and the type of stowage that we have, well, everybody isn't qualified to load one of them, and a lot of times, well, I have to do it, myself. I hire a man, however, and let him give the cargo to the ship, but I make the stowage plans and everything, myself.

Q I see.

How much authority do you have over these clerks that you [547] hire?

A Complete authority.

Q If you don't like them you send them back any time?

A What is that?

Q I say if you don't like their work you can send them back any time?

A Correct.

* * * *

Q Well, now, when you get hold of Mr. Morrow about hiring these extra clerks, how does he handle it?

A Well, to tell you the truth, I hire about fifteen clerks a year because all we have is about one ship a month. That is it.

So I call up and usually I can always get a man, somebody, [548] and, like I say, I know who is qualified and who isn't, that can do the type of work that I have because personally I have broken in a lot of men, myself, during the time, showed them how to be clerks, and a lot of times they are available, and I have them for that reason.

* * * *

[549] Q Now, have you ever hired a clerk or checker without going [550] to Local 1351?

A No, sir.

Q How are your clerks and checkers paid?

A How are they paid?

Q The extra ones, yes, sir.

A We pay them, Waterman Steamship Corporation pays them and I kept their time personally and turned them

or it into our District Manager who passed it on to the Accounting Department for payment. We paid it locally.

Q Are they paid by check?

A Yes.

Q And to whom are the checks delivered?

A To the Local, and I got a receipt for every one that I have delivered to the Local.

Q Mr. Morrow?

A That's right, from the Accounting Department. . . .

* * * *

Q . . . Then you personally make a trip down to the Local hall?

A That is correct, me personally, I bring them over there.

Q Now, do you recall certain notices having been posted on the waterfront?

[551] A Yes, I do. I have one in my office on 16 now.

Q Have you still got it?

A Yes. And I also have one in my other office on 35 that's up there.

TRIAL EXAMINER:

Let's make sure you are talking about the notices —

THE WITNESS:

The notices of the NLRB.

Q (By Mr. Whittaker) Of the settlement agreement?

A Yes, sir, on the settlement, yes, sir.

Q Did you make any changes after those notices went up in your way of operating?

A No, sir, I have never had an occasion to.

Q Did you receive around November 1955 a hundred dollars from Avenue N Corporation?

A Yes, I did.

Q Did you receive that in an envelope?

A No, I didn't. I received it right over Mr. Morrow's desk. I just happened to be going in there. I think it was just around the time I went to pay some percentage, and it was there. In fact that and the percentage, I knew that we were going to be paid it, and I just picked up the checks.

* * * *

[552]

WILLIAM W. WAITE

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) ...

* * * *

Q And who do you work for?

A E. S. Binnings, Steamship Agents.

Q How long have you worked for them?

A I am in my tenth year with them.

Q What is your position?

A Chief wharf clerk.

Q And how long have you held that position?

A Since I began with them.

* * * *

[553] Q Now, are you a member of the Clerks and Checkers Local 1351?

A Yes, sir.

Q And how long have you been a member?

A I am a charter member of it.

Q And that was when, 1932?

A I think so, yes, sir.

Q Have you been in the last four or five years an officer of the Local?

A The last four or five, you say?

Q Yes.

A Yes.

Q What office did you hold?

A I held the Vice-Presidency of it.

Q What years?

A Oh, I don't recall the years to be exact. About three years ago, I think, was the last time I was in that office.

Q Have you held any other offices?

A Well, on various committees, but not any offices. I was on the Contracting Committee and some other committees from time **[554]** to time.

* * * *

Q Do you pay a percentage to Local 1351?

A Yes, sir.

Q How often do you pay that?

A I pay it as I am paid, twice a month.

Q And how do you go about paying them? Do you pay it by mail, do you mail it or —

A No, in person to the Business Agent.

Q Do you do that by check or cash?

A Cash usually.

Q Do you attend meetings?

A I try to whenever I can, yes. I haven't been too regular in the last year on account of the amount of work we have had and most of the times it would hit at night-time, the meetings, and we are working at that time, and I can't attend, but whenever I can I do.

* * * *

【555】 Q What type of business is E. S. Binnings?

A Steamship agents. They have the agency for various lines.

Q Do they operate any of their own boats?

A No, sir.

Q Do they do any stevedoring?

A No, sir.

Q Who does your stevedoring?

A I am speaking of the Port of Houston. What they do other than this I don't know.

Q Yes, sir, I mean for my questions to be confined to the Port of Houston, too.

A All right, sir.

Q Who does their stevedoring?

A They have two stevedoring contracting companies. One is the Southern Stevedoring and Contracting Company, and the other is the Atlantic & Gulf Stevedoring Company.

Q Are those independent stevedoring contractors or are they associated with E. S. Binnings?

A As far as E. S. Binnings is concerned they are independent, that is, as far as my knowledge. I don't go into the personal matters.

* * * *

[556] Q Now, do you ever have occasion to order extra clerks and checkers?

A Yes, sir.

Q What procedure do you follow when you order an extra clerk?

A Finding out how many men and what type of work is on the vessel that I am beginning to work, I call up the Business Agent of Local 1351 and explain to him what type of work I have got, coming up, and ask for some men like that, the best that can qualify for those jobs.

Q Now, do you ask for him to read you the list or what?

A In many cases I ask for the men by name even before he starts the list, and then if those men, if the ones I am particularly interested in aren't available, then I ask him to read the list, which he does.

Q Now, before they started charging an extra ten or eleven [557] cents for naming them, did you always name the men you wanted to use as checkers?

A Yes, sir, I have always tended to name my men.

Q How are these extra clerks and checkers paid?

A They are paid through the stevedore firm because our company doesn't have — they report for only one employee, and that is myself. Everything else is handled through the stevedoring company and are paid by the steve-

doring company upon request of our pay slips that I issue, myself, or Roy Shilk does, one of the two of us.

Q Do you know whether they are members of Master Stevedores Association of Texas?

A I understand they are paid through that system, yes, sir.

Q Yes.

They use the IBM system?

A I understand they do, yes, sir. I have never drawn a check through that, myself, however, since it's been established.

Q Now, around November 1955 did you receive one hundred dollars from the Avenue N Building Corporation?

A Yes, sir, I received a dividend check for a hundred dollars, yes, sir.

Q And did you receive a refund of percentage for a period of about six months?

A Yes, sir, I did.

* * * *

【558】

S. D. GARDNER

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * * *

【559】

DIRECT EXAMINATION

Q (By Mr. Whittaker) ...

* * * *

Q Who do you work for?

A Texas Transport & Terminal.

Q How long have you worked for them?

A I believe I am going on about six years now.

Q What position do you hold with them?

A I am known as chief clerk.

* * * *

Q Are you a member of Clerks and Checkers Local 1351?

A Yes, sir.

Q How long have you been a member?

A Oh, I don't know, I would say roughly seven to eight, possibly eight years.

* * * *

Q Do you pay your percentage to the Local?

[560] A Yes, sir.

Q How often do you do that?

A Twice monthly.

Q Do you do that in person or by mail?

A In person.

Q Do you use check or cash?

A Cash, usually cash.

Q Do you attend the monthly meetings?

A Well, I attend some. I don't attend all.

Q Now, what type of business is Texas Transport & Terminal Company engaged in?

A Well, that's — they are agents for various lines, steamship agents.

Q Do they do any stevedoring work?

A Through their Texports, Texports Stevedoring.

Q Is that a company owned by Texas Transport & Terminal?

A Yes, sir, it's owned by the Texas Transport & Terminal.

Q Are there any monthly clerks on the payroll of Texas Transport & Terminal other than yourself?

A At this time there are seven.

Q That are monthly?

A Uh-huh.

Q Are there any that are 40-hour week guarantee, that are 40-hour a week guarantee?

A Two at this time.

[561] Q Did you have anything to do in the hiring of the seven who are monthly?

A Yes, sir.

Q What did you have to do, what part did you play in that?

A Well, to recommend, first to see that they are qualified to work vessels, and to do practically any type of work that we have to do, and after we are satisfied that they are qualified and efficient, then we recommend them to our superior and to our uptown office.

Q Who is "we" now?

A Mr. Gibson, my superior.

Q And yourself?

A And myself. We agree on it. Then we recommend it to our office and they are hired on a monthly basis.

Q What authority do you have over these other monthly clerks?

A Well, the same as we would over an extra clerk or anyone else that might be working under us.

Q Who orders men out of the hall of 1351?

A I do that.

Q What is your procedure for ordering extra men?

A Well, we call Mr. Morrow, the Business Agent, usually calling for our men by name, and after he's read his list of who he has available, then we select the men then to the best of our ability to fill the job, the specific job that we have to fill.

[562] Q Well, suppose the list is a little short and you are not acquainted with the qualifications of those on the list.

A Sometimes we have that risk to run. We have occasionally, but then in that case we usually, if it's a dangerous job, request a young man or one that is physically able, along with his other abilities, that he might stay out of the way and that he might be able to get out of the way. Some of it is extremely dangerous.

Q And that man you do not request by name?

A Yes, we will still take him by name and we still pay him the rate.

Q Yes.

A Because we might select him, maybe, over another one, over someone else that we figured is less competent.

Q You ordered them by name so that you will be sure to —

A So that we can call him.

Q I see.

Do you still pay this ten or eleven cents differential?

A Yes, sir.

Q To checkers, I mean?

A Yes, sir.

* * * *

[564] Q How are the clerks and checkers under you paid?

A Well, they are paid by check. They draw their money weekly.

Q Is that through the Master Stevedores Association of Texas, the IBM?

A The IBM has not taken it yet that I know of. They are not handling it yet.

Q Is that handled by your office uptown?

A Yes, sir.

Q Are the checks delivered to the Local hall of 1351?

A Well, what we term as the regular men or monthly men, ours are sent to our office, and for convenience the others are sent to the hall. It's central and it's for the convenience, send [565] it direct to the hall.

Q Now, in November of 1955 did you receive a refund of your percentage for six months?

A Yes, sir.

Q Did you receive a hundred dollars from the Avenue N Building Corporation?

A Yes, sir.

Q Whereabouts did you receive it?

A At the hall.

* * * *

Q Do you remember in June or July of 1955 certain NLRB notices were posted around the waterfront in settlement of the matter between the Local?

A Yes, sir.

Q After those notices were posted —

MR. CRYSTAL:

Just a minute. I don't know whether the Reporter, whether the Reporter got the answer in the record. The witness shook his head. But the Reporter can't put that in the record. Will you speak out loud? What was your answer?

THE WITNESS:

Yes. Would you ask that again?

MR. WHITTAKER:

I heard him say "yes, sir."

MR. CRYSTAL:

Oh, pardon me. I just saw him shake his head.

Q (By Mr. Whittaker) Speak up, please.

A Yes, sir, I remember it.

[566] Q Well, after that, Mr. Gardner, did you change in anyway your way of hiring people out of the hall?

A No, sir.

Q Did you change your operations in any way?

A No, sir.

Q Have you ever hired a man as a clerk or a checker or timekeeper from some place other than Local 1351?

A No, sir, because that's our central — I wouldn't know really anywhere else to employ them.

Q Have you had men come up on the dock down there and ask you for a job as a clerk or checker?

A Yes, sir, we have had that. In fact we have had it off the job and we refer them, have them to go to the central place and to report to Mr. Morrow where he can be accessible in that way.

* * * *

CROSS EXAMINATION

Q (By Mr. Crystal) ...

* * * *

【568】 Q Now, let's talk about Mr. Vinson.

What has been your experience in working Mr. Vinson since May 17, 1954?

A Well, Mr. Vinson also, if certain jobs we could use him on, he's worked in the holds of the vessels quite a bit for us in the past.

Q Well, when you say in the past how far back?

A Well, back since I have been there in this capacity.

Q Has he worked in the holds of vessels in the last two or three years?

A No, not in the holds of vessels in the last two or three years.

【569】 Q I am asking you about your experience. I don't think you understood me. Since May 17, 1954, Mr. Gardner.

A '54?

Q Yes, sir.

A I don't believe that he's been in the hold of a vessel during that time.

Q You think it would be safe to send him into the hold of a vessel at his age?

A I do not.

Q Have you heard his name called off of Mr. Morrow's list since May, May 10th, 1955?

A Yes, sir.

Q Have you heard it called this year?

A Yes, sir.

Q Now, have you ever refused to give Vinson any work?

A No, sir. As I said, if there was a job there that he can — that he's competent and physically able to take care of it —

Q That will be on deck, wouldn't it?

A Well, or on the dock.

Q It wouldn't be in the hold of a ship?

A It would not be in the hold of a vessel.

Q Have you ever refused to give him any work?

A No, sir.

Q Now, let's talk about Linnenberg.

What has been your experience with Linnenberg since May 17, [570] 1954?

A Well, Mr. Linnenberg was working regularly, I say regularly, on a 40-hour week.

Q Now, what period of time are you talking about now?

A 8:00 a.m. on a Monday until Friday evening at 5:00 p.m.

Q What year?

A Well, that would go back into, I would say, '52 and '53.

Q Well, let's not, please, sir, go behind '54.

A Well, '54, along in there he quit me.

Q He was working for you and quit his job?

A He quit the job, so he told me, because he had already made that year all that he could make and he couldn't go any further. That was all that he was allowed to make. That was along in the fall of the year.

Q Along in the fall of '54?

A And I had to replace him. About three months there to go.

Q All right.

Now, let's talk about his fitness to do particular kinds of work on a ship.

What is he qualified to do as far as you know? Is he able to go down in the hold of a ship?

A No, sir, at that time we were using him, even then, delivering, dock jobs, strictly dock jobs.

Q Now, do you think he is physically able to go down in the hold of a ship now?

【571】 A I don't. I would rather not.

Q Have you ever refused, just refused, to give him any work?

A No, sir, he's worked for us a lot.

* * * *

【577】 KUNO SIEGFRIED TROSTMANN
a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

【578】 Q (By Mr. Whittaker) ...

* * * *

Q Who do you work for?

A Texas Transport & Terminal Company.

Q Do you have some connection with the Master Stevedores Association of Texas?

A Yes, I do have.

Q What position do you have with them?

A Well, it is a position as custodian of funds.

Q And how long have you held that position?

A Oh, about five years.

* * * *

Q (By Mr. Whittaker) I will show you Appendix to General Counsel's Exhibit 1-A, Appendix A, which has a list of members of the Master Stevedores Association of Texas, and ask you to go through this list and state which of these companies are using the IBM system? First, maybe I should have you explain the IBM [579] system.

* * * *

A The stevedores in Houston, the Houston stevedores, have consolidated a pay-off and the payrolls are computed and prepared by the Service Bureau.

Q (By Mr. Whittaker) Is that the IBM?

A That is the IBM, yes.

TRIAL EXAMINER:

Is that IBM, does it mean International Business Machines Corporation that prepares the checks and the salaries?

THE WITNESS:

That is right, yes.

TRIAL EXAMINER:

Thank you.

Q (By Mr. Whittaker) Did you have something further? Now, looking at this list, does Atlantic & Gulf Stevedores, do they use it?

A They are using it, they are members.
Canadian Gulf Line.

Q They use it?

A Yes.

[580] Gulf Stevedore Corporation.

Q Do they use it?

A Yes.

Liberty Stevedore Company, they are using it.

Southern Stevedoring Company, Southern Stevedoring & Contracting Company, Strachan Shipping Company, Suderman Stevedores, Incorporated, Texas Contracting Company, Texas Star Stevedoring Company, The Texports Stevedore Company, Incorporated, United Stevedoring Corporation, and Young & Company of Houston.

Also Atlantic & Gulf Grain Associates. That's a subsidiary of this (indicating).

Q Yes.

I see.

Now, how do you get the money to make these checks good?

TRIAL EXAMINER:

What do you mean by that?

MR. WHITTAKER:

Well, he's writing checks. I just, looking at the mechanical process, when does the company turn the money over?

TRIAL EXAMINER:

Oh, when do they turn it over?

MR. WHITTAKER:

Yes, sir.

TRIAL EXAMINER:

All right.

A Well, each individual company is rendering individual payrolls to my office. We in turn send them to the Service Bureau, IBM, and the Service Bureau after the closing of the pay period prepares a payroll for each individual company.

[581] Then they combine all the earnings for each man. For instance, one man might have worked for seven or eight different companies during the week. He receives one check for that amount rather than receiving eight or nine different checks.

And then the checks and the payroll register is sent to my office. The checks are signed and the various companies are called upon on Thursday around noon to send me a check for the amount of their net payroll which, of course, is deposited into the bank account.

And that's the end of it.

Q (By Mr. Whittaker) Do you counter sign the checks or does —

A Yes, they are countersigned by me. It's a machine. I mean facsimile countersigned.

Q Now, the individual receives a single check and what is it, Master Stevedores Association of Texas?

A Yes, Master Stevedores Association as agents for, and all the companies are listed on the check.

Q Yes.

Now, as a matter of fact does he get a check A and a check B?

A That is right.

Q And the check A, does that represent the percentage?

A That is right.

Q Now, as far as Local 1351 is concerned how do the checks get from you to Local 1351?

[582] A The checks are picked up by a representative of the union against a signature, against a receipt, and copy of the payroll.

Q It's given to the union, too?

A It's given to the union, yes, sir.

Q Does Master Stevedores Association of Texas employ any clerks or checkers?

A No, sir, they do not employ anyone.

Q It's just as the name implies, it's merely an association?

A It's an association. They are acting as agents, as paying agents for the various stevedoring companies.

* * * *

CROSS EXAMINATION

Q (By Mr. Crystal) Is the same amount of percentage deducted from all the checks or does it vary?

A From this Local 1351?

Q Yeah.

A Only one percentage.

[583] Q Same thing all the way through?

A It's the same percentage, yes, sir.

MR. CRYSTAL:

Thank you, sir. No further questions.

REDIRECT EXAMINATION

Q (By Mr. Whittaker) Do you remember when it was it went to three per cent for everybody?

A For everybody? You mean in 1351?

Q Yes, sir.

A Well, that's all I know is three per cent for 1351, when we started with the consolidated pay-off in the first week of July 1955.

Q Oh, that was when you started?

A That was when we started the consolidated pay-off, yes.

MR. WHITTAKER:

That is all.

EXAMINATION

Q (By Trial Examiner) These percentage checks, are they made out to, the payees, to the individual involved?

A That is right, sir.

Q And if he wants to he signs it and endorses it to the union?

A Yes, that is right.

* * * *

[591] DAVID McKEE FRAZIOR
a witness called by and on behalf of General Counsel, being
first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

Q (By Mr. Whittaker) . . .

* * * *

Q Who do you work for?

A Harris County Ship Channel & Navigation District.

Q In what capacity?

A Assistant Terminal Superintendent.

* * * *

Q What type of an organization is Harris County Ship
Channel & Navigation District?

A A subsidiary department of the State of Texas.

* * * *

[594] Q Now, have you ever hired a clerk without going to Local 1351?

A Not that I recall.

Q Have you ever hired a checker without going to Local 1351?

A Not that I recall.

Q Have you ever had someone ask you for a clerking job or checking job who was not a member of 1351?

A We have had lots of people come by and wanting a job, and we have referred them to the various locals.

Q And as to whichever — well, have you referred any to Local 1351?

A Yes, sir.

Q Do you know G. R. Vinson?

A Yes, sir.

Q Have you ever had occasion to use him as a checker?

A Yes, sir.

Q How did you find his work?

A Satisfactory.

Q Did you ever make any complaints to Local 1351 about [595] his work?

A Not that I can recall.

Q Do you know Frank Linnenberg?

A Yes, sir.

Q Have you ever had any occasion to use him as a checker?

A I have.

Q How did you find his work?

A Satisfactory.

Q Did you ever complain to Local 1351 about using him?

A Not that I can recall.

* * * *

[597] Q Now, talking about this ten-cent differential when you order by name, you pay the same ten cents if you have a non-union man as a member?

[598] A Yes, sir.

Q The reason you pay the ten cents is so you get the selection you want?

A That's right, and he carries a clerk's rating instead of a checker's rating.

Q Right.

* * * *

Q Isn't it a fact Mr. Vestal told you that if you wanted to order men by name you wouldn't have to pay that ten cents?

A He —

Q Didn't he tell you that?

A He has told me that in the last six months.

* * * *

[602] WARREN CHESTER EITELBACH
a witness called by and on behalf of General Counsel, being
first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) . . .

* * * *

Q And who do you work for?

A Southern Stevedoring Company.

Q In what capacity?

A Superintendent.

* * * *

Q Are you familiar with the Master Stevedores Association of Texas?

A Yes, sir.

Q Do you hold a position with it?

A Will you repeat that?

Q Do you hold a position or title?

A I am on the Board of Directors now.

* * * *

[607] Q Now, your name appears on the contract — excuse me — the Master Stevedoring Association of Texas' name appears on the contract with the various I.L.A. locals, including Local 1351; as president, did you participate in any of the negotiations?

A What year?

Q Of 1956?

A Yes, sir.

Q How did you participate?

A Well, I was on the Negotiating Committee representing the employers.

Q Well now, were you representing the companies or the M.S.A.T.?

A M.S.A.T.

Q Does the M.S.A.T. exercise any authority over the companies?

A No authority, no.

Q It is just what it implies, it is the agent for the companies?

[608] A Yes.

Q Do you recall back in June or July of 1955, there were some NLRB notices posted on the waterfront which are here by way of Board Exhibit 5-A, do you recall that?

A I recall the notice, yes, sir.

Q Well, after this notice was posted, did the Texas Star Stevedoring Company or the Southern Stevedoring Company make any changes in their methods of employment or paying the clerks and checkers and timekeepers of Local 1351?

A I don't understand just what you mean by —

Q Did you change your procedure for ordering clerks, timekeepers and checkers?

A No, sir.

Q Did you change your method of paying them?

A No, sir.

* * * *

[610] Q Well now, all stevedoring companies are members of M.S.A.T., is that correct?

A To the best of my knowledge all stevedoring companies are.

* * * *

[611] ERNEST J. CHANCELLOR
a witness called by and on behalf of General Counsel, being
first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) . . .

* * * *

Q How old are you, Mr. Chancellor?

A I am seventy-one.

* * * *

【612】 Q (By Mr. Whittaker) Have you worked out of Local 1351?

A Yes, sir.

Q In what job?

A As checker.

Q Have you ever done any clerking?

A No, sir.

Q Any timekeeping?

A No, sir.

Q When is the last time you worked out of Local 1351?

A Monday, this week.

Q Are you on Social Security, Mr. Chancellor?

A Yes, sir.

Q How much money have you made so far this year?

A \$460.00.

Q Is there a limit to the amount of money you can make in order not to endanger your Social Security?

A Yes, sir.

Q What is that limit?

A \$1200.00 a year.

Q When you get close to that amount, what will you do?

A I notify our business agent and tell him I have my

earnings just about in; I have to be careful about what I make.

Q Do you tell him how many more days you can work?

A Yes, sir, I tell him how many more days I can work.

* * * *

[613] Q Did you make close to \$1200.00 in 1956?

A 1956 I jumped the gun a little; I made an error in my addition and it cost me \$228.00. I made a little over \$1200.00 and they penalized me two months, and my wife one month. I made \$70.00 over.

Q Did you make close to 1200 in 1955?

A I believe in 1955, \$77.00 a month is all we could make, and I couldn't work but three days and a half a month to make that \$77.00. I believe that was in 1955.

* * * *

[614] Q Since 1954 have you gone into a hold of any ship?

A I believe I did for four hours down in the upper deck of a ship, to chop some coffee one time, four hours.

Q Was that this year?

A No. That was in 1954.

Q 1954.

Do you feel strong enough now to go in the hold of a ship?

A I had rather not. I had not, because my reflexes are not as quick as they used to be, and when there is a slip on the winch or something like that, it's dangerous for an older person, that is, it would be for me.

Q Have you been doing some pineapple checking?

A Yes, sir. I worked a pineapple ship two weeks ago, shipping out.

Q Was that on the dock?

[615] A Yes, sir.

Q What were you doing last Monday?

A I was loading out general cargo on one of the Lykes Brothers Steamship Company boats, including bagging, whiskey, rum, tile, and stuff like that, just general cargo.

Q Was that going onto a ship?

A No, sir. It was going into boxcars and trucks.

* * * *

[627] WILLIAM E. ROWND
a witness called by and on behalf of General Counsel, being
first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) . . .

* * * *

Q Who do you work for?

A Harris County Navigation District.

Q How long have you worked for them?

A Since November, 1951.

Q In what capacity are you now employed?

A Materials handler — materials handling supervisor.

Q How long have you held that job?

A Since November 1951.

Q Who is your immediate supervisor?

A Colonel David Frazier.

* * * *

Q Do you have occasion to order checkers?

[628] A Yes, either in his absence or on certain occasions of emergencies.

Q And when you do order checkers how do you order them?

A I call the hall and ask for a man.

Q Do you call Mr. Morrow?

A Yes, or if he is not there, whoever is taking his place.

Q Give us your conversation as it would go.

A Well, if I called, I would tell him I need a man at such and such a dock, and that is about what it is.

Q Would you tell him it is a checker you needed?

A Yes. Or I would say a man, and a checker is the understanding.

Q Now, did you ever call for a checker by name?

A I haven't in some time.

Q Have you ever had occasion to use Mr. Linnenberg, Mr. Frank Linnenberg as a checker?

A Oh, it has been some time. We have used him in the past.

Q Did you use him in 1954?

A Possibly. It's rather hard to say; it has been so long; we may have.

Q Well, if he had been sent to you in 1954 would you have used him?

A Yes.

Q Would you have used him in 1955?

[629] A Yes.

Q Would you have used him in 1956?

A Yes.

Q Do you know Mr. G. R. Vinson?

A Yes.

Q Have you used him in the past as a checker?

A We have used him in the past as a checker.

* * * *

Q (By Mr. Whittaker) Did Mr. Linnenberg, when he worked [630] for you, were his services satisfactory?

A Yes, sir.

Q When Mr. Vinson worked for you were his services satisfactory, as a checker?

A Yes.

* * * *

[633] LEO E. BARTHELMESS
a witness called by and on behalf of General Counsel, being
first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) . . .

* * * *

Q How old are you, sir?

A I will be seventy in May.

Q Do you work out of Local 1351?

A Yes, sir.

Q Are you a member?

A No, sir.

Q Are you a clerk?

【634】 A Well, I am a clerk; I work as a checker — as a clerk, that's right, I beg your pardon.

Q Do you do clerk's work or checker's work?

A I do clerk's work.

Q Have you done any checking work this year?

A That is all I do when I work at the port, yes, sir; I am a clerk.

Q At a clerk's pay?

A Yes, sir.

Q Well, now, I am not talking about your pay scale; I am talking about the actual work you perform.

A I am a clerk; I also do checking as clerk work.

Q I see.

Have you been doing any checking work this year?

A I don't know how you want to put that. I unload cars and load cars and I check; I have a man — they send me a man; I tell him what to do, as I am a clerk. Now, I check also.

Q And you work alongside him doing the same thing?

A Well, he may do one thing and I may be doing something else, I may be doing another thing. I work on various —

Q Did you do any loading and unloading of cars in 1956?

A Yes, sir; that is part of my job.

Q Did you do any in 1955?

A Yes, sir.

Q And in 1954?

【635】 A Yes, sir.

Q Now, did you do any checking —

MR. WHITTAKER:

Strike that.

Q (By Mr. Whittaker) Have you done any work in 1956 in which you went in the holds of a ship?

A We don't go in ships at all, sir.

Q When is the last time you went in a ship?

A It's been back in 1952. That is before I worked for the Port Commission.

Q Is most of your work with the Port Commission?

A It's all with the Port Commission.

Q Are you a regular employee?

A Well, I work forty hours a week with them.

Q Is that guaranteed to you?

A No, sir. They can knock me off any time they want to.

Q Are you on Social Security?

A I am going on Social Security this year.

Q And how much have you earned so far this year?

A Well, it's in the neighborhood of about \$800.00.

Q And you are going to stop at what?

A \$1200.00 or less than that. I don't want to be penalized like Mr. Chancellor.

Q Do you recall how much you earned in 1956?

A I think it was around \$4200.00, in the neighborhood of that; I don't know exactly; I just don't remember.

* * * *

[638]

PATRICK C. CHAPMAN

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) ...

* * * *

[639] Q How old are you, sir?

A Sixty-seven years old the 24th day of last December.

* * * *

Q Are you on Social Security?

A Yes, sir.

Q What year did you go on?

A In 1955.

Q Do you do any work out of Local 1351?

A Yes, sir.

Q When did you first start working out of there?

A The first of 1955, January 1955.

Q How did you go about getting work there?

A Well, before I retired, you see, I had been working **[640]** for Gulf Atlantic Warehouse for some time and naturally, I come in contact with fellows, like Dick Vestal, Charlie Steiner, "Dub" Mann, "Preacher" Gardner — what "Preacher's" name is I don't know. And I told them when I retired I would like to work a little bit out of the hall but I didn't want to take anybody else's bread and butter out of their mouths. I could make \$1200.00 a year, and if it was convenient for them, I was available.

* * * *

【641】 Q Do you pay a percentage on your —

A Yes, sir, three per cent.

Q And how do you pay that, by check or by cash?

A By cash.

Q Do you pick up your check at the hall?

A Yes, sir.

Q You pay that to Mr. Morrow?

A Yes, sir, or whoever else might be there in his place.

Q I don't believe I have asked you how much you have made this year, have I?

A Not yet, no, sir, you haven't.

Q How much have you made?

【642】 A Approximately \$300.00.

Q And are you going to stop short of \$1200.00?

A I hope so. I can do a little figuring.

Q Well, in 1955 did you stop short of \$1200.00?

A Yes, sir.

Q Did you stop short in 1956?

A Yes, sir.

Q When you work out of Local 1351 do you work as a clerk or a checker?

A I work one time as a clerk for about four hours one night, but as a rule as a checker.

Q Did you sometimes get paid clerk's pay just for checking?

A Yes, sir.

Q Now, what kind of checking work have you done?

A Well, I can handle most any job they have down there.

Q Can you go in the hold of a ship?

A I probably would break my neck; I have been, like Mr. Chancellor said, I have been 'tween deck a short time where they had some candy or stuff like that to unload off

of one of Lykes' ships. But to go down in the hold of a boat, they can knock me off right now. I believe I am agile enough, but I am not going to take that chance.

Q Do you do most of your checking on the dock?

A Most of it; in fact, practically all of it.

* * * *

【657】

RALPH A. MASSEY

a witness called under Rule 43(B) by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * * *

【658】

DIRECT EXAMINATION

Q (By Mr. Whittaker) ...

* * * *

Q What position do you now hold with the South Atlantic and Gulf Coast District?

A I am president of that district.

Q How much territory does that embrace, Mr. Massey?

A From Wilmington, North Carolina to Brownsville, Texas.

Q All those ports?

A Uh-huh.

Q Did you at one time hold office in 1351?

A Yes.

Q What office was that?

A President.

Q And when was that?

A Well, that was from the '30's up through 1950, in the '50's.

Q Do you at present hold any office in Avenue N Corporation?

A Yes.

Q What office is that?

A President.

Q How long have you held that office?

A Since it was inaugurated, since we had a charter.

[659] Q And that was since 19 —

MR. CRYSTAL:

It's dated. September 7, 1947.

THE WITNESS:

That is when it was incorporated, and a charter was issued the 17th day of September, 1947 was the date the charter was issued.

Q (By Mr. Whittaker) May I see that, please?

(Document handed to counsel.)

MR. WHITTAKER:

Pursuant to stipulation and in order to keep from encumbering the records, Mr. Examiner, I propose the following stipulation, that the charter shows in Paragraph 2 the purpose for which such corporation is formed is to erect or repair any building with improvement and to accumulate and lend money for such purposes, and to purchase, sell, and subdivide real property in towns, cities, and villages and their suburbs, not extending more than two miles beyond their limits, and to accumulate and lend money for

that purpose as authorized by Subdivision 47 of Article 1302 of the Texas Revised Civil Statutes of 1925.

Do you so stipulate?

MR. CRYSTAL:

Yes.

MR. DOWD:

No objection.

* * * *

[661] Q (By Mr. Whittaker) Under your corporate existence, Mr. Massey, has the corporation accumulated any property?

A Accumulated any property?

Q Yes, sir.

A We might have accumulated a lot back there several years ago. We had most of this stuff prior to the issuance of this Charter. We had a group of men that got together, put out money into it, bought a lot and worked on a foundation of a building and built up a building and set up the corporation from that; and I think we have since that time — I don't know how many years ago, because this corporation, as far as any — it is a dormant proposition and sustains itself at the present time because it's not active except for what properties it's got and what's coming in.

Q What is its source of income?

A Just rent.

Q On the building there?

A Yes.

Q From Local 1351?

A That's right.

Q And that amounts to \$60.00 a month?

A It does at the present time.

Q Does Avenue N pay for any repairs or additions to the building?

[662] A The Local has been keeping the building in repair for that, because we would have had to collect a whole lot more rent for it than we did had we been keeping it up.

Q And who pays the taxes?

A Avenue N.

Q Who pays the insurance on the building, if you have any?

A Avenue N; I tell you Avenue N pays it.

* * * *

Q And who are the stockholders of Avenue N Corporation?

A Well, there is a group of men; I don't know just who they are.

Q Are they limited to the members of Local 1351?

A Well, they could have been outside of the thing, but some of them in 1351 didn't care to be any part of the corporation. And that thing, as stated, was originally obtained — [663] the men that set up the corporation were the ones that were the stockholders.

Q The ones that set it up were all members of Local 1351, weren't they?

A I think they were. That has been quite some time ago; I know we were down there, but I wouldn't say so.

* * * *

[667] TRIAL EXAMINER:

Can you gentlemen agree only stockholders got the hundred dollars?

MR. CRYSTAL:

Yes, sir.

TRIAL EXAMINER:

Can you?

MR. WHITTAKER:

That is my understanding.

TRIAL EXAMINER:

I take it you have an agreement on that point.

MR. DOWD:

No objection.

* * * *

Q Since 1947 has Avenue N Corporation paid any dividend other than the one in 1955?

A No. ...

* * * *

[668] Q Who are the present officers of Avenue N Corporation?

A The same ones that was there five or six years ago.

Q I will show you what the Secretary of State sent us, and you can tell me if there are any changes from it.

Have you changed officers since 1947?

A There might have been one person down the line there somewhere, but I don't recall it. There has been very little difference.

[669] Q Was David McGovern still in it?

A No. David McGovern is one man that has been out of the corporation for some time.

Q Did he leave at the time he ceased to be business agent?

A Not exactly at that time, I don't think. But he is no more an officer in it.

Well, this man is dead, so he wouldn't be there either.

Q That is H. H. Moody?

A Yes. And Scalf; that is directors they have there.

Q No, those are stockholders. Now, we come to President Massey, W. W. Waite, Secretary.

A Those three are still there.

Q And you were the president?

A Yes. And he was the secretary.

Q Who do you have on your Board of Directors?

A We have the same ones that was on this list, or they haven't been filled; that is all.

Q I don't have a list of the Board of Directors. Do you have some information here that bears on that?

A No, I don't.

MR. CRYSTAL:

I think the officers constituted the Board.

* * * *

[670] Q Well, could you tell me what your bank balance was for the Avenue N Corporation for the end of 1954, 1955, and 1956?

A I was just looking here a minute ago when you told me that and —

Q Well, just take your time.

A It looks like — I don't know how December — well, I have January of 1955.

Q That will be all right.

A January 1955 and November of 1954, but I don't know what happened to December.

Q Give us January 1954.

A January 1955, you mean? You wanted December of '54.

Q Yes.

A That is January of 1955 or November 1954.

Q Give me those too, and we will know it's in between.

MR. CRYSTAL:

December 31, 1954 balance \$245.31.

MR. WHITTAKER:

Is that 1954?

THE WITNESS:

Yes, that is picked up on that January **[671]** statement, the old balance.

MR. WHITTAKER:

Is that 2,600 —

MR. CRYSTAL:

No. \$265.31.

MR. WHITTAKER:

All right.

MR. CRYSTAL:

What year do you want now?

MR. WHITTAKER:

1955.

MR. CRYSTAL:

All right.

Get January 1, 1956.

All right. Here is December 31, shows a balance on December 28, 1955 of \$401.42.

MR. WHITTAKER:

Yes.

MR. CRYSTAL:

Now, what other year do you want? :

MR. WHITTAKER:

The end of 1956.

MR. CRYSTAL:

That would be January '57.

THE WITNESS:

We are just in 1957 now.
You want December?

MR. CRYSTAL:

We gave them December of 1955?

THE WITNESS:

Well, look in there and see if you have that; Manny must be — I thought I was going —

MR. CRYSTAL:

Can we get off the record?

TRIAL EXAMINER:

Off the record.

(Discussion off the record.)

TRIAL EXAMINER:

On the record.

MR. CRYSTAL:

The last balance is of November 14, 1956, \$888.95.

[672] TRIAL EXAMINER:

Any further questions?

MR. WHITTAKER:

Yes, sir.

Q (By Mr. Whittaker) How many stockholders did you have when you made this — when you paid this hundred dollars?

A I couldn't tell you. When we get that list you can count them up. I don't know what we had. I think it was about fifty.

Q Are you going to be back tomorrow?

A I didn't intend to be back. I think it was between fifty and sixty. I didn't say it was any more than that.

Q Did each of them get a hundred dollars?

A As far as I know. All the stockholders got —

Q Why I am having a little trouble is that your balance that you gave me at first in 1954 was \$265.31, is that right, or something in that neighborhood? And then, in the next, twelve months period you only take in at \$60 a month, \$720.00, and you would have less than a thousand dollars in the bank; and if you were paying fifty stockholders a hundred dollars, that would be \$5,000.00.

A We are going to have to go into that thing. Possibly there has been an advance into the corporation on rent for some period to come. Now, that will develop through questioning, if that is a fact. That is the only way other than that that I can account for that.

* * * *

[674]

EXAMINATION

Q (By Trial Examiner) Is there a written lease between Local 1351 and Avenue N?

A No, sir.

Q Does Avenue N get any income from rentals other than what it gets from 1351?

A No, sir.

[675] Q And the only building they rent to 1351 is the one where the hiring hall is, is that correct?

A That's right.

* * * *

Q Do you hold any office in 1351?

A Not at present.

Q Did you in 1956?

A No.

Q Did you in 1955?

A Yes.

Q What office?

A President.

Q Did you in 1954?

A Yes.

Q What office?

A President.

Q Mr. W. W. Waite, do you know whether he is a member of Local 1351?

[676] A Yes.

* * * *

Q (By Trial Examiner) J. J. Casey, does he hold office in 1351 now?

A Yes.

Q What office, do you know?

A Financial secretary.

Q Did he hold office during 1956?

A Yes.

Q Same office?

A Yes.

[677] Q How about 1955?

A (Nods head yes.)

■ * * *

[689] TRIAL EXAMINER:

On the record.

Let the record show there has been an off the record discussion and the parties can agree that the Houston Maritime Association is a Texas corporation having its office and principal place of business in Houston, Texas; that it is engaged in the business of establishing and maintaining uniformity in commercial usages with reference to the loading and unloading of vessels of all kinds in ports of Texas, including Houston, disseminating business information having reference thereto, promoting the interest and increasing the facilities of the shipping trade in the ports of Texas, and representing members of the Association collectively in negotiating collective bargaining **[690]** agreements and in disputes with reference to interpretations of such agreements; and in relations generally with various labor organizations, including Local 1351 involved herein.

MR. EIKEL:

We so stipulate.

MR. WHITTAKER:

I will stipulate.

MR. CRYSTAL:

We stipulate.

* * * *

TRIAL EXAMINER:

On the record.

Let the record show there has been further discussion and the parties can stipulate further that the stipulation just made with respect to Houston Maritime Association also applies with respect to Master Stevedores Association of Texas.

So agreed, gentlemen?

MR. EIKEL:

We agree.

TRIAL EXAMINER:

You agree?

MR. WHITTAKER:

Yes, sir.

MR. CRYSTAL:

Yes, sir.

* * * *

[691]

RALPH A. MASSEY

resumed the stand and was examined and testified further as follows:

* * * *

REDIRECT EXAMINATION

* * * *

MR. CRYSTAL:

General Counsel's Exhibit 32 contains the names of all of the members of 1351. Those where the X mark appears are those who own stock in Avenue N. Those where there is no X mark do not own stock and did not own stock in Avenue N.

Those with the X mark are the ones that received one hundred dollars each along about November 1955.

TRIAL EXAMINER:

Do you so stipulate?

MR. WHITTAKER:

From Avenue N Corporation?

MR. CRYSTAL:

Yes.

MR. WHITTAKER:

Yes, I so stipulate.

[692] TRIAL EXAMINER:

Any objection?

MR. EIKEL:

No objection.

* * * *

(The document heretofore marked General Counsel's Exhibit No. 32 for identification was received in evidence.)

Q (By Mr. Whittaker) Could you tell us where Avenue N got the money for the dividends?

A Checking with the stockholders, I find some \$7500.00 was advanced to Avenue N by Local 1351 to apply against rent at some future date. The date was not determined as to when it would be paid. That is where the money comes from to pay off that hundred dollars.

Q Did the corporation, Avenue N, sign a note for it?

A No. That was just advanced by the local.

Q Did you have an exchange of letters or anything?

A No exchange of letters.

Q It was just all oral?

A Just all oral.

* * * *

[693] TRIAL EXAMINER:

By "checking with the stockholders I found out," you mean you talked to them last night?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

You are going on their memory plus yours?

THE WITNESS:

Yes, sir.

* * * *

JOHN J. CASEY

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) . . .

* * * *

Q Are you a member of Local 1351?

A Yes, sir.

Q Do you hold an office in it?

[694] A Yes, sir.

Q What office is it?

A Financial Secretary.

Q How long have you been financial secretary?

A Since 1945.

Q Do you hold any office in Avenue N Corporation?

A Yes, sir.

Q What office do you hold?

A Secretary and — Financial Secretary.

Q How long have you held that?

A Since it was organized, and I don't remember which year that was.

Q Yes, sir. All right, sir.

I have here what is in the record as General Counsel's Exhibit 32, which is a list of members of the local who were paid a hundred dollars sometime in November 1955.

Can you tell us, please, some of the — why some of the members on this do not own some stock in Avenue N. Corporation?

A McGovern, we had already paid off. Lacy and Reynolds had been paid off.

Q And Flynn, when he died, was paid off?

A Yes, his wife.

Q Well, K. O. Rich, when did he come into the union?

A He come in in 1956.

Q He wasn't a member in 1955?

[695] A No, sir.

Q F. C. Rinehart, when did he come in?

A 1956.

Q M. J. Schreiber.

A He come in in 1956.

Q J. A. Smith?

A All these men here come in after they were paid off. All these men that haven't got X after their name came in in 1956.

Q Too late to be paid the hundred dollars?

A Yes, sir.

TRIAL EXAMINER:

May I get clarification on that. Does that mean everybody on this exhibit, which is General Counsel's Exhibit 32, is now a stockholder in Avenue N?

THE WITNESS:

Well, yes, sir, now they are.

Q (By Mr. Whittaker) But the ones with the X mark were the ones that were members when this hundred dollars was distributed and got the hundred dollars, and the ones without X did not get the hundred dollars?

A Yes, sir.

Q This \$7500.00 transaction Mr. Massey just finished telling us about, did you participate in that?

A I did what?

Q Did you participate in that transaction?

A Yes, sir.

[696] Q Will you tell us how it came about?

A Well, in 1953 we put \$17,000.00 of 1351's money in building and loans, in trust, to Avenue N. Then we paid percentages, all the percentages from October — I mean — wait a minute — April 1, 1955 to October 1, 1955, everybody that worked through the local we paid their percentage back, and we drew this money out of the building and loans to help pay off this percentages, and then loaned \$7500.00 of that money to Avenue N.

* * * *

Q (By Mr. Whittaker) We started with \$17,000.00 in building and loans, is that right?

A Yes.

MR. CRYSTAL:

Just a minute.

Now, we have started out here with \$17,000.00. I would like to know who started out here with this \$17,000.00.

TRIAL EXAMINER:

Read back the witness' answer.

[697] (Record read.)

Q (By Mr. Whittaker) What I am trying to find out, Mr. Casey, is did the percentages and \$7500.00 take care of all the \$17,000.00 or did some of it go back in the treasury of 1351?

A Went back in the treasury of 1351.

Q Do you remember what the amount was?

A Well, you mean what did we have left out of it?

Q Yes.

A The percentages cost us over \$17,000.00 to pay it back, so we still had to use some of our money we had in the bank, 1351's money.

■ * * *

[698] MR. WHITTAKER:

May I have it, please.

I want to include it as part of the exhibit, your Honor.

I want the exhibit to start off as 33-A, the recap for 1954 —

TRIAL EXAMINER:

Recap of what?

MR. WHITTAKER:

Well, I will come to it in just a minute.

1954, 1955, 1956, showing total dues and initiation fees taken in.

And 33-B, the recap for receipts for 1954, showing the standing of the local at the end of 1954.

【699】 Q (By Mr. Whittaker) Would that be correct?

A Yes.

Q 33-C is the same thing for the year 1953?

A That's right.

TRIAL EXAMINER:

Wait a minute. — C and — B are the same except for different years, is that right?

MR. WHITTAKER:

Yes, sir.

And 33-D is the same, for 1956. And 33-E, and going on through the alphabet and into the doubles, begins with receipts for the month of January 1956 and then expenditures for January, and on through November 1956.

TRIAL EXAMINER:

Give me again the beginning date.

MR. WHITTAKER:

January 1956.

TRIAL EXAMINER:

January 16 through —

MR. WHITTAKER:

November 1956.

TRIAL EXAMINER:

Thank you.

(Thereupon the documents above referred to were marked General Counsel's Exhibits Nos. 33-A through 33-BB for identification.)

MR. WHITTAKER:

Mr. Crystal, will you stipulate these are authentic records of the local?

MR. CRYSTAL:

Yes.

MR. WHITTAKER:

Mr. Eikel?

MR. EIKEL:

I have no objection.

MR. DOWD:

No objection.

[700] MR. WHITTAKER:

I would like to offer these, this composite Exhibit 33-A et cetera.

TRIAL EXAMINER:

I take it you gentlemen agree these documents which Mr. Whittaker has in his hands which have been marked for identification as 33-A through 33-BB are what they purport to be, namely, excerpts from the records of Local 1351 in

some instances, and in the instances indicated by Mr. Whittaker, a recapitulation of the records of 1351.

MR. CRYSTAL:

Yes, sir.

TRIAL EXAMINER:

I take it there is no objection to the receipt of these documents and no dispute.

MR. EIKEL:

No, sir.

TRIAL EXAMINER:

The documents are received and permission to substitute photostatic copies is granted.

(The documents heretofore marked General Counsel's Exhibits Nos. 33-A through 33-BB, inclusive, for identification were received in evidence.)

MR. WHITTAKER:

I would also like to get a further stipulation so as not to have to get the details of 1954 and 1955, that the patterns set forth in the expenditures here, starting with 33-E, is typical.

MR. CRYSTAL:

With the exception of the percentages refund of 1955.

TRIAL EXAMINER:

In other words, in the other years you did not have a percentage refund?

[701] MR. CRYSTAL:

That's right.

MR. WHITTAKER:

And this is a typical pattern of 1954 and 1955.

MR. CRYSTAL:

Yes, sir.

TRIAL EXAMINER:

I take it you have a stipulation on that. No objection from the respondent unions and there are no issues in the matter.

MR. WHITTAKER:

Then I would like to have marked for identification as General Counsel's Exhibit 34-A a sheet No. 1 of — what do you call these, work sheets?

THE WITNESS:

Yes.

MR. WHITTAKER:

Showing the percentage of how it was figured for the repayment; first, it's for members, 1955 and it's headed — the first one is C. H. Anderson. Sheet 2 pertains to members and is headed with J. P. Binford.

Sheet 3 is for non-members and is headed by T. J. Allen. And Sheet 4 is for non-members and it is headed with G. R. Vinson; and Sheet 5 is for non-members and it is headed by W. K. Merritt; and sheet 6 is for non-members and it is headed by W. A. Johnson.

(Thereupon the documents above referred to were marked General Counsel's Exhibits Nos. 34-A through 34-F, inclusive, for identification.)

MR. WHITTAKER:

Now, Mr. Examiner, I am having photostats made of this document, which is about 24 inches wide, so as [702] to show the left-hand column, the name, and the total percentages on the right-hand column; and when I make a substitution later, it will come in in abbreviated form.

TRIAL EXAMINER:

Any objection to that?

MR. CRYSTAL:

I think the record should show, and certainly I want the Examiner to know that the way this is now laid out it shows the percentage payments for each monthly period that it is due. And when he narrows it down to photostat, what he intends to do is just show the total; is that correct?

MR. WHITTAKER:

That's right.

TRIAL EXAMINER:

Is that agreeable? If not, let's find out what it is.

MR. CRYSTAL:

That is all right. But I just wanted the Court to know.

TRIAL EXAMINER:

Yes.

MR. WHITTAKER:

With that understanding I offer GC-34-A, -B, -C, -D, -E, -F.

TRIAL EXAMINER:

Any objection?

MR. CRYSTAL:

No objection.

TRIAL EXAMINER:

I take it there are no objections to that and take it further you agree that information reflected on what is now General Counsel's Exhibit No. 34, 1, 2, 3, 4, 5, and 6 is an accurate reflection of the records of Local 1351.

[703] MR. CRYSTAL:

Correct.

MR. WHITTAKER:

That's correct.

MR. EIKEL:

No objection.

TRIAL EXAMINER:

I take it we have no issue on that.

The documents are received and permission to photostat as indicated by Mr. Whittaker and to substitute the photostats for the documents currently in the courtroom, granted.

(The documents heretofore marked General Counsel's Exhibits Nos. 34-A through 34-F, inclusive, for identification were received, in evidence.)

Q (By Mr. Whittaker) On Sheet No. 2, which is General Counsel's 34-B, Mr. Casey, I notice these percentages were paid monthly. Are those the salaried members?

A Yes, sir.

Q That starts off with J. P. Binford, doesn't it?

A Yes.

Q Then on GC-34-F, I notice that there is some payments here of percentage that don't start until June of this year. Are those people who just started late in the year working out of the hall?

A That's right, yes.

* * * *

[705] Q (By Mr. Whittaker) Now, taking up General Counsel's Exhibit No. 33 for expenditures during the year 1956, Mr. Casey, what do you understand to be included by the term "hiring hall **[706]** expenses"?

A I don't know what you would.

* * * *

Q (By Mr. Whittaker) What would you understand or how would you go about drawing a line between expenses that are pure and simple for the purpose of running what is called the hiring hall in order to see that members and non-members are routed to the proper jobs that are available in the Port of Houston, as distinguished from the pure business of just running a local other than the hiring hall.

MR. CRYSTAL:

Can you answer that question?

[707] THE WITNESS:

No, sir.

Q (By Mr. Whittaker) Well, do you recognize that there is a distinction?

A No, sir, I can't.

Q Let's try.

Here in January 1956, C. B. Morrow's salary.

A Yes, sir.

Q Does he do things other than just run the hall down there?

A No, sir.

Q In your opinion then, that would be a hiring hall expense?

A Right.

Q What about Pacific Mutual Life Insurance Company for 119 members of Local; that would be a Local expense, wouldn't it, and not a hiring hall expense?

A I don't know how to answer that.

Q Well, that is not necessary to get employment, is it?

A Oh, no.

Q Republic National Life Insurance Company, life insurance for 76 members of Local, \$110.20. Now, is that in addition to the 119 members?

A No, sir; it's part of the 119 members.

Q Now, don't you have some life insurance on the non-members too?

A Yes, sir.

Q Where is that here?

[708] A Right here, that 119 members.

Q On this you are treating both members and non-members the same?

A Yes, sir.

Q And how long do you have to work out of the hall before you become entitled to life insurance?

A Two years.

Q Then that at least is a benefit to anyone using the hall?

A Yes, sir.

Q Southwest Bell Telephone Company, \$18.15. Does that include long distance calls?

A No, that is the phone bill, no long distance calls in there.

That is your regular monthly phone bills?

A Yes, sir.

Q Houston Lighting and Power, \$2.50; that would be a hall expense?

A Yes, sir.

Q The gas company, \$3.85, that would be a hall expense?

A Yes, sir.

* * * *

【709】 Q O. J. Hooper. What is that?

A Expenses for January.

Q Who is O. J. Hooper?

A He is recording secretary.

Q That is \$21.04?

A Yes, sir.

Q H. Vestal, expenses for January, \$50.00. J. J. Casey, expenses for January, \$50.00.

Well, now, what kind of expense is that, Mr. Casey?

A We are allowed that expense as members down there.

Q Well, do you have anything to do with the hiring arrangements for the members and non-members?

A No, but I certainly have to sign those checks and make that list out.

Q Well, in other words, that is more of a Local expense than a hall expense?

A I still think that would be a hall expense.

Q Well, what benefit to the members getting — what benefit 【710】 is there to the members, or what benefit do the members get or the non-members, let's say, from this expense in getting employment?

A I certainly have to write C. B. Morrow's check out, and do things down at the hall. I do that in my —

Q And for that you get paid \$50.00?

A No. I do other work too.

Q What other work?

A Keeping the records.

Q Well, what does O. J. Hooper do?

A Well, he is the recording secretary.

Q Well, you don't need a recording secretary to get a job, do you?

A You need him if you have to write a letter, a stenographer.

Q Wouldn't that be a Local letter about Local matters rather than getting somebody a job?

A Might be.

* * * *

[712] Q (By Mr. Whittaker) During January 1956 and before Mr. Vestal took on a full-time job this year, I see you have him down for \$50.00 expense; is that correct?

A Yes, sir.

[713] Q Now, at that time did he have anything to do actively with the hiring hall, giving someone a job?

A If he had a lot of investigation to do, yes. I don't know about getting somebody a job or not, but —

Q Would that be on investigating a grievance?

A Yes, sir.

Q R. C. Shilk, door prize, \$10.00.

A That was meeting night.

Q I guess you would say that is a Local expense?

A Local.

Q H. C. Board, salary. Was he substituting for C. B. Morrow there?

A That's right.

Q In other words, he was doing his same job?

A Yes, sir.

Q The next item, \$173.70, withholding and FICA tax. Was that on Morrow?

A Morrow and Board.

Q And the next item is International Longshoremen's Association, Independent, per capita tax, 90 members at — what is that, 85?

A Eighty-five cents.

Q Per member first and second quarter, \$459.00; is that correct?

A Yes, sir.

[714] Q That would be a local expense, wouldn't it?

A You still have to pay it to operate that hall.

Q Well, I mean as a local you had to meet that expense, didn't you?

A Yes, sir.

Q And you didn't have to pay anything per capita to — per capita on non-members?

A Yes. I paid per capita tax on non-members too.

Q Well, is that the next item here, where you have 90 members at 25 cents per month?

A Yes, sir.

Q First and second quarter?

A Yes.

Q Are those the non-members?

A One is International and the other is South Atlantic and Gulf Coast.

Q This 195 is still on the 90 members?

A Yes.

Q Do you have it on here some place where you paid on non-members?

A No, sir.

Q You don't pay a per capita tax on the non-members, do you?

A We do on some of them, yes, sir.

Q Who is that, R. L. Massey?

[715] A No.

Q Well, which of the non-members that you pay a per capita tax on?

A Well, we pay a per capita tax — we've got people that have been working down there out of locals, we pay a per capita tax on some of them.

Q Can you name one of them?

A I couldn't pick no particular one out, no, sir.

Q Well, in 1956 did you have 90 members?

A Yes, sir.

Q These are 90 full-fledged members?

A Yes, sir.

Q Then you paid, in the next item, Houston Dock and Marine Council, \$14.00 tax.

A That's right.

Q And Central Dock and Marine Council tax, \$10.00. Does the Local belong to these councils?

A Yes, sir.

Q And as a local, you have to make these payments?

A Yes, sir.

Q The next item is March of Dimes donation, \$10.00. And the next is C. B. Morrow FICA refund, \$6.00.

A I taken too much out of his check and I had to refund it back.

Q Here is H. Vestal checking — what is that?

[716] A Payrolls and books.

Q \$126.54. What payrolls was that?

A Taking a sheet out, like you have over there, all the payrolls of each man, against the cash book, percentages against the cash book to see if they checked alike.

Q How much life insurance do you have on a member?

A Have a thousand dollars on some and two thousand dollars on others.

Q Do you carry two-thousand-dollar policies on non-members?

A No, sir.

Q Here on this expenditures for February I see on 2-4 Emily Moses, notary fee, nine non-Communist affidavits, \$2.25.

A Right, sir.

MR. CRYSTAL:

Is that two dollars and a quarter?

MR. WHITTAKER:

Yes, sir.

THE WITNESS:

Yes, sir.

Q (By Mr. Whittaker) And then you have another door prize here for J. C. Morgan. Did you give a door prize each month?

A Yes, sir.

Q Was that to increase attendance at the meetings?

A Yes, sir.

Q I see here 2-11 you have Mrs. O. J. Hooper, printing forms for election, \$10.00.

A That's right.

Q Was that election within the local itself?

[717] A Election of officers, yes, sir.

Q And the next item, Arabia Temple Crippled Children's Clinic, \$25.00. Is that a donation by the local?

A Yes, sir.

Q This item here for 2-24, U. S. Treasury Department, District Director, Withholding Tax, \$11.93. What is that about?

A They complained I made a mistake of \$11.93.

Q So you had to pay them back?

A Yes. They are still arguing about it though.

Q This shows, the next page, receipts for February of 1956?

A Right.

Q It shows dues; what is that, 501.67?

A Right.

Q How many members did you have in February, February 1, 1956?

A I told you when we started yesterday, that is all the money coupled together, when I gave you those forms yesterday.

Q Oh, this is the full year of 1956?

A No. That is just a month.

Q Well, this is percentage or — you don't carry it percentage, you just carry it dues?

A That's right.

Q Whether it's permit or what?

A That's right.

[718] Q A member only pays \$1.00 a month dues?

A That's right.

TRIAL EXAMINER:

What do you mean, he carries percentages, dues or —

MR. WHITTAKER:

He doesn't separate percentages from dues on this sheet of paper, Mr. Examiner. He just lists dues, and then he has total figures which includes both percentages and dues.

Q (By Mr. Whittaker) Is that correct?

A That's right.

TRIAL EXAMINER:

How do you carry it on whatever records you keep? As I understand, these receipts Mr. Whittaker holds in his

hands were taken from something. How do you keep it on your regular books?

THE WITNESS:

We have a ledger we post them in.

TRIAL EXAMINER:

Do you mix percentage and dues in one item?

THE WITNESS:

One item, make a deposit.

Q (By Mr. Whittaker) Now, coming to March of 1956, I see here for 3-17 is an item for O. J. Hooper, expenses on Lake Charles, Louisiana, \$25.00.

A Dock Marine Council.

Q Was he attending a meeting there?

A That's right.

Q That would be the Local's business?

[719] A Yes, sir.

Q There is a similar item for Vestal and for —

A T. H. Hutson.

Q T. H. Hutson. That would be the same thing, wouldn't it?

A Yes, sir.

Q Coming here to March 17, it says Houston Dock Marine Council, picket signs and stands, \$25.00. Was that for some picketing the local was going to engage in?

A Yes, sir.

Q Or was the Council going to engage in?

A Locals.

Let me explain, and maybe I can help you out. Houston Dock and Marine Council, all the locals in Houston belong to the Houston Dock and Marine Council.

Q And this is a contribution you had to make to that?

A Yes, sir.

Q And here is another door prize.

I see here in March of 1956 that you received \$2,025.09 on bond money from International.

Some place else I believe you carried them as having loaned International \$2,000.00. Does that mean you got it back?

A Yes, sir, we got it back. We loaned them another thousand probably.

Q I see.

[720] Coming to May of 1956, here for May 5, South Atlantic & Gulf Coast District, I.L.A. Independent, two delegates to annual convention, \$20.00. That was the local's business, was it?

A Yes, sir.

Q Now, we come to May 9. It says Clarence Kirby for Add. in South Atlantic & Gulf Coast Convention, \$20.00.

That would be for the local, wouldn't it?

A Yes, sir.

Q And 5/12, Carroll Printing Company, \$12.50. Do you know what that printing charge was for?

A Forms.

Q What kind of forms, Mr. Casey?

A It may have been books; I don't remember what the \$12.50 is for. It could have been forms or books either one. I don't know.

Q Then 5/17 was a \$200.00 expense item for C. B. Morrow attending a Brownsville convention?

A That's right.

Q And \$300.00 for Vestal?

A That's right.

Q And — well, that is all. Just sent the two on the convention?

A That's right.

Q On June 30 you have Parker Brothers Company, yard of shell for lot, \$11.40. That would be for the hiring hall, [721] wouldn't it?

A Yes, sir.

Q I notice here for July 1956, on the 7th, you paid Avenue N Building Corporation for May and June, \$120.00.

A Well, I had missed one month there. The next month I didn't pay them rent.

Q When a member dies, you do pay them a hundred dollars for their stock, to the family, out of Avenue N?

A No, sir, not now. No, sir.

Q Not now?

A No, sir.

Q Now, on July 7 here you have \$30.00 for a hundred Constitution books for International Longshoremen's Independent, is that correct?

A Yes.

Q That would be Local business, is that right?

A That's right.

* * * *

[722] Q (By Mr. Whittaker) On July 7, H. Vestal, stationery bought by Vestal, \$16.27. Do you recall what stationery that was?

A Some of those big yellow sheets like you got.

Q Those work sheets?

A Yes, sir.

Q Then on 7-14 you have Maria's Flowers.

A Yes, sir.

Q Wreath for Mr. Burnell, \$20.00?

A Yes, sir.

Q He was a member, wasn't he?

A No, sir. He didn't even belong. He was a superintendent for Isthmian Steamship Company.

Q Was this sent in the name of the local?

A Yes, sir.

Q Is this K. A. Burrell, B-u-r-r-e-l-l?

A Yes, sir.

Q And July 14, that is a donation of \$25.00 to Father Flanagan's Home?

A That's right.

Q And the for July 28 you have some more per capita tax and some tax paid to — one item paid to the International [723] Longshoremen's Independent, \$270.30; and the other, South Atlantic & Gulf Coast District I.L.A. Independent, \$159.00?

A That's correct.

Q That covers the third and fourth quarter.

Continuing July, on the next page, you have some payments there to the Central Dock and Marine Council, \$14.00 and \$5.00. Here, July 28 — I can't read that.

A Paint and varnish company, tile and material for floor of hall.

Q The next item, \$40.94 is labor for laying the tile?

A Right.

Q Then the next item here is \$140.00 to International Longshoremen's for 14 new members at \$10.00, is that correct?

A Right.

Q Here is \$200.00 to Mrs. C. L. Flynn on death of Broth-

er C. L. Flynn, Harrisburg National Bank checkbook, is that correct?

A Yes, sir. In other words, this is where we kept the account.

Q What was the occasion of paying that \$200.00?

A We pay the members' wives \$200.00, give her cash in case she needs quick money.

Q That is just for the local, then, isn't it?

A Yes, sir.

Q Now, coming to August, here is an item on August 20, [724] W. C. Mann, meeting of Contract Committee at Mobile, \$246.00. Was that his expenses?

A Yes, sir.

Q And H. Vestal was the same expense, is that correct?

A Right.

Q And H. C. Board was the same expense?

A Right.

Q Now, here is an item here on August 20 — what is that, Laurie Florist?

A Yes.

Q Wreath for Brother Flynn, \$25.00. Was that sent in the name of the local?

A Yes, sir.

Q Here for August 29, \$314.00, three entries, for Vestal, Board, and Mann for a meeting in Washington?

A Yes, sir.

Q Was that Washington, D. C.?

A Yes, sir.

Q That was a local item?

A (No response.)

Q The local's interest?

A Yes, sir.

Q I don't believe I see Mr. Crabtree's name here. This is in 1956. Is that F. G. Crabtree?

A That's right.

[725] Q Were you using him as a substitute for Board?

A For Morrow.

Q For Morrow?

A Yes, sir.

Q You were using him as a substitute for C. B. Morrow?

A Yes, sir.

Q Now, here is an item on 9-10, Republic National Life Insurance Company for 12 new members at \$1.45, \$17.40. These 12 new members, did they have life insurance as non-members?

A Not in the Republic they didn't; up here in the Pacific, yes, sir.

Q Did you continue their life insurance in Pacific?

A Yes, sir.

Q They they would have at this time about \$2,000.00?

A That's right.

Q The next item is Houston Dock and Marine Council, an item of \$30.00.

Now, item September 15, South Atlantic & Gulf Coast District I.L.A. Independent, special assessment \$1.00 for 106 members; that is \$106.00?

A Yes, sir.

Q You didn't actually collect assessments, did you?

A No, sir. That was from our general funds.

Q Now, on 9-22, International Longshoremen's Special Assessment for \$2.00 for 106 members, which is \$212.00. Did [726] that come out of the general treasury?

A Yes, sir.

Q Without any extra assessment against the members?

A That's right.

Q Then we have here expense items of Board, Vestal, and Mann going to the Control Committee —

A Contract Committee.

Q To New York. Each received \$341.50 for expenses?

A That's right.

Q Then on September 29, Board received \$81.12 for expenses going to Galveston?

A On the Contract Committee.

Q On the Contract Committee.

And W. C. Mann received \$54.08 going to Galveston?

A That's right.

Q And Vestal received \$81.12 going to Galveston?

A That's right.

Q Coming to October are three items for the 9th of October, pertaining to Vestal, Board, and Mann, in which each received \$46.00 expense for one extra day. What does that mean?

A They actually spent one more day there than I give them credit for.

Q So you had to reimburse them for an extra day?

A That's right.

Q Down here, your October 27, Sears & Roebuck and Company, [727] 24 shares, \$155.76. That would be a hall expense?

A That's right.

Q Coming to November 10, here is an item — is that Ina's Flowers?

A Yes.

Q For Brother Moore's father?

A Yes.

Q Was that sent in the name of the Local? It's for \$25.00.

A Yes, sir.

Q You have also for that date an expense item of \$104.75 for H. Vestal, \$104.85 for W. C. Mann and \$131.87 for Board, going to Galveston.

A Right.

Q For the same date, H. Vestal going to New Orleans, \$90.00, W. C. Mann, \$90.00 and H. C. Board, \$90.00, is that correct?

A That's right.

Q On the 16th — what is that, Cal Farley's Boys Ranch?

A That is Cal Farley's Boys Ranch in Amarillo.

Q Is that similar to Father Flanagan's Boy's Ranch?

A Yes, sir.

Q Then on the 24th you have expenses going to Galveston for Vestal of \$112.68, for Board, \$112.68, and for Mann \$91.64, is that correct?

A Yes, sir.

* * * *

[729] Q I have forgotten whether I asked you or not, but is there any written instrument showing that the \$7500.00 was loaned by Local 1351 to Avenue N Building Corporation?

A I don't think there is, no, sir.

Q It would be just the cancelled check?

A Yes, sir.

* * * *

EXAMINATION

Q (By Trial Examiner) Mr. Casey, does Avenue N have a [730] financial secretary?

A I take care of their books.

Q You take care of their books too?

A Yes, sir.

Q I think the record shows this \$100.00 payment Avenue N made was made in November 1955; is that approximately correct?

A Yes, sir.

Q Do you happen to know the actual date?

A No, sir.

Q And was the rebate of percentages made through the local at the same time?

A Yes, sir.

Q All that transaction was at the same time?

A The same time, yes, sir.

Q When you draw a check for Local 1351, does the check on the face of it show the purpose for which it was drawn?

A Not on the face, no.

Q Just a check paid to somebody for so much money and properly signed?

A That's right.

Q The stub would show?

A Yes, sir.

* * * *

[731]

J. J. CASEY

recalled as a witness by and on behalf of the General

Counsel, having been previously sworn, was examined and testified [732] as follows:

FURTHER EXAMINATION

Q (By Trial Examiner) At the time that the \$100.00 was distributed by Avenue N, were all the members of Local 1351 stockholders in Avenue N?

A No.

Q Were substantially all of them?

A Yes, sir.

Q There were some exceptions that were not, but most of them were, is that right?

A Yes, sir.

* * * *

O. O. WRIGHT, SR.

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) ...

* * * *

[733] Q How old are you, sir?

A I am 70 years old.

Q Do you work out of Local 1351?

A Yes, sir.

Q How long have you worked out of that local?

A Oh, I began there ten years ago last September, I believe it was, 1946 is when I began.

Q Are you a member of that local?

A No, sir.

Q What kind of work do you do?

A Oh, I do what they call the checker's work.

Q Have you ever done any clerking?

A No, I haven't.

Q Have you ever kept time?

A No, sir, I haven't, not down there.

Q Do you recall what you earned during the past year working out of Local 1351?

A In 1956?

Q Yes, sir.

A \$4900.00, a little over \$4900.00.

Q And how much did you earn in 1955, if you recall?

A Not quite \$4,000.00.

Q And in 1954?

[734] A I don't remember that; it was over 4,000 though.

Q You say it wasn't over four?

A A little over \$4,000.00. It varies, depending on the work down there.

Q In the ten years you have worked out of that local, what was the best year?

A I believe last year.

Q You earned more in 1956 than any other year?

A Yes, sir.

* * * *

[736] CROSS EXAMINATION

Q (By Mr. Crystal) Mr. Wright, you say you worked hatches in '56?

A Yes, sir, I believe I worked in them in 1956.

Q You didn't have to go down in the hold, did you?

A I don't remember. I think I worked one ship in 1956; if I did, it was a coffee boat, or general.

* * * *

[804] FRANK ANTHONY LINNENBERG

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * * *

[805] DIRECT EXAMINATION

Q (By Mr. Whittaker) ...

* * * *

Q Have you been a permit man, working out of Local 1351?

A I have, sir.

Q Since when?

A Since November 1946.

* * * *

[807]

(T h e document heretofore marked General Counsel's Exhibits Nos. 1-FF and 1-JJ for identification were received in evidence.)

* * * *

[811] Q Were you also asked by agents of the Board to prepare a list of dates on which you were also available for work at the local's hall?

A I was.

Q Have you prepared those?

A I have.

MR. WHITTAKER:

I ask the reporter to mark for identification as 37-A the last sheet of what looks to be personal stationery paper, green ink, and the only portion I want to offer later on is "Days I was available," and pages following.

And also as 37-B, "Days available for work in 1955."

* * * *

[813] TRIAL EXAMINER:

Well, the witness now testifies that the dates appearing on 37-A represent days that he actually went to the hiring hall, as I understand it.

Am I right or wrong?

THE WITNESS:

That's right.

TRIAL EXAMINER:

And the dates appearing on 37-B represent the dates that he actually went to the hiring hall in 1955.

Is that correct?

THE WITNESS:

That's right.

* * * *

[814]

(T h e documents heretofore marked General Counsel's Exhibits Nos. 37-A and 37-B for identification were received in evidence.)

* * * *

[821] Q Some mention has been made here before, Mr. Linnenberg, about your being on a pension by several of the chief clerks.

A Yes, sir.

Q Will you describe for the record what pension or pensions you have?

A I have a Social Security pension; ...

* * * *

[822] Q (By Mr. Whittaker) ...

Have you any other pension besides U. S. Social Security?

A I have U. S. Navy.

Q Are there any reasons why under the U. S. Navy pen-

sion you cannot work, is there anything in it to keep you from working?

A Outside that if I make outside of \$2700.00 a year, on account of being a married man he is allowed to make \$2700.00 a year.

Q And keep his Navy pension?

A And keep his Navy pension.

* * * *

[823] Q Is there anything in the Social Security pension that restricts the amount of money you can earn in a year?

A \$1200.00.

Q Now, in 1954 is that what the Social Security law was?

A They had it split that year.

Q How do you mean that?

A They had it \$900.00 and \$1200.00.

* * * *

Q (By Mr. Whittaker) I didn't understand you. You said they split it; it was 900 and 1200 dollars. Did they change [824] the law then?

A In 1955 they got \$89.30 a month. Before that they were —

Q Could you earn \$1200.00 in 1954?

A No, not in 1954; \$900.00. I earned more.

Q And what did you do?

A I had them to stop my checks, which you were allowed, you could stop one, two, three, four, five, six

checks, Social Security checks, and make all the money you wanted.

Q When was it you had them stop it in 1954?

A 1954, I think that was in July, sometime — no, I don't have that — stopped it in August to October in '54.

Q So you were free during that period of time to make all the money you could?

A I was allowed to make that much more.

Q All right.

A You see — can I tell you this? It was \$78.10 a month during 1952 and 1953, and in 1954 it's \$89.30 a month, the checks are.

Q What was it in 1955?

A It's the same thing, \$89.30. Now — well, go ahead.

Q In '54, could you make your 1200 or — is it 1200 in 1954 or 900? It was 900 for you because you stopped three checks?

A Yes, sir.

* * * *

[825] Q (By Mr. Whittaker) Which months in 1954 is it you did not receive any Social Security pension?

A August and September and February, April, May, and June.

Q You received no pension from the Social Security?

A No, no checks. I did that on account of I could make more money than the checks would be to me.

Q Did you make more money?

A Sure I did.

* * * *

Q Did you hear one or more of the chief clerks say you could only work three and a half days a month?

A I heard some.

Q Is that so, Mr. Linnenberg?

A No, it is not so.

* * * *

[826] Q Well, when you get close to the time you have made as much money as you can, you want to make, so as to not lose your Social Security payment or pay a penalty, as Mr. Chancellor had to pay, what did you do?

A Well, whenever I get to the end of the time, I was always working for Strachan Shipping Company, and I would go up to Mr. Steiner and tell him such and such a date now I will finish up my time with Social Security pay, that I won't be able to work any longer. Some years I finished up in September.

"Well," he says, "Old Boy, I'm sorry to hear that because I sure need you."

But he asked me if there wasn't a way I could get around it. I said, "Well, I could cut off a Social Security check and make that much more money through the hall."

"Well," he says, "if you can do that that will help us out that much." And by only cutting off one check it wouldn't amount to much.

Q When was this?

A That was in 1954.

Q Well, did you cut off a check for that purpose?

A Yes, sir.

* * * *

[829] TRIAL EXAMINER:

You say that conversation was either the last part of November or the first part of December?

THE WITNESS:

About the middle of November, 1954.

TRIAL EXAMINER:

About the middle of November 1954?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

All right.

Q (By Mr. Whittaker) Look, Mr. Linnenberg, you filed your charge on November 17.

A Yes.

Q It couldn't be the 15th of November.

A No.

Q It's less than a month after that, so it would be from November 17 to December 17; can you fix it any closer?

[830] A Well, I wouldn't hardly know to say what date, to tell the truth.

Q You can't get any closer than that it was within a month of December 17?

A It would be a guess.

TRIAL EXAMINER:

All right.

Q (By Mr. Whittaker) During October of 1955 did you make notes as to what was going on down at the hall?

A I sure did.

Q Was this sort of a diary or what were you keeping it for?

A I was keeping it more to see what men were getting the most work, who was being sent out more than the other fellow was. They had a blackboard up there with the names and hours the men worked, and then whenever they would send a man out, the man would wipe his name off the board.

Q Well, Mr. Linnenberg, I am talking about the year 1955 now, after the notices went down.

A Oh.

Q You notice this is 7-25-55. Is this your name here?

A Yes.

Q Let's go back here to October of 1955. Here is October 8, 1955. Here is one October 5, 1955. Is that your name, Linnenberg?

A That's correct.

Q He has you checked as going out to work during that period. This is the period of time I am talking about, not [831] when they had a blackboard.

A Well —

Q What time did you generally get down to the hall?

A I always got down there before 7:00 o'clock.

* * * *

[834] Q Do those notes show you worked on October 14?

A Show what?

Q Show you worked on October 14.

A No, sir, I did not work.

Q Well, did you work —

A Was that in 1954 or 1955?

Q 1955.

A No, sir.

Q Did you work on S/S "DEL VALLE" in 1955?

A "DEL VALLE"?

Q Yes.

A What month was that? October 17 —

Q Do you know where you worked then?

A Yes, sir. I worked down in the batch discharging coffee. That should have been the 14th instead of the 17th.

Q That you worked on the "DEL VALLE"?

A Yes, sir.

[835] TRIAL EXAMINER:

What document are you looking at now and testifying from?

THE WITNESS:

1955, from the timebook.

TRIAL EXAMINER:

That is your diary?

THE WITNESS:

Yes, sir, that is from day to day.

TRIAL EXAMINER:

Go ahead.

MR. EIKEL:

May I see it if he is looking at it?

THE WITNESS:

Yes, sir.

Q (By Mr. Whittaker) Did you work any other hatch jobs after the 14th?

A The 14th of October?

Q Yes, sir.

A I don't think I did.

TRIAL EXAMINER:

Mr. Eickel, you want Mr. Whittaker to hold up for a minute?

MR. EIKEL:

No, sir.

Q (By Mr. Whittaker) Did you receive any telephone calls from Mr. C. B. Morrow to report for work?

A I did on October 18, 1955.

Q Was that at your home?

A At my home, yes, sir. And I was not at home when he called there. And Mr. Steiner also. And when I got home my wife told me about C. B. Morrow and Mr. Steiner calling me for me to go to work at City Docks 9 on a British ship, checking automobiles, and I called up their Long Reach 5 office and [836] a Mr. Evans answered the phone; and I told him to tell Mr. Steiner that I was avail-

able for work now, and I never heard no more from it. And that was the last call I received.

* * * *

[839] Q (By Mr. Whittaker) Now, the Original Charge in 39-CB-124 was filed October 6, 1955, and it's here as an exhibit. I don't recall the number now. It's part of GC-1.

Keeping this in mind, did you get any telephone calls?

A I sure did, one.

Q Where did you receive this call?

A I received it at my home.

Q Did the party calling identify himself?

A No, he didn't say who he was. He tried to imitate his voice as though it was broken Italian.

Q What did he say to you?

A He said, "You better stay away — " I can't spit it out like he did. He said, "You better stay away from Local 1351 hall, if you know what is good for you."

[840] Q What did you say?

A I didn't have a chance to say nothing. He hung up on me.

* * * *

Q (By Mr. Whittaker) How far after the filing of the charges was this, a day or a week or what?

MR. EIKEL:

He ought to ask him when it occurred.

Q (By Mr. Whittaker) Do you know when it occurred, Mr. Linnenberg?

A Just a few days after the filing of the charge.

* * * *

[848] CROSS EXAMINATION

Q (By Mr. Crystal) Mr. Linnenberg, how old a man are you?

A I am seventy years old.

Q Seventy. When were you seventy?

A I will be seventy on October 13, rather, this coming October 13.

Q So we are talking about the time when you were sixty-eight?

A That's right.

Q We are talking about 1954 and 1955 here, aren't we?

A That's right.

* * * *

[850] Q ...

Now, did I understand you correctly when you said that on account of your Social Security you could only earn \$78.10 during the first nine months and the last three months it went up to \$89.10, is that correct?

A It went up to \$89.30.

Q \$89.30. All right.

Did I understand further that you had your quota made by September 1954?

A Yes, sir.

Q And what did you do after September 1954?

A I went fishing.

Q All right.

Now, when did you come back to work or back to the hall looking for work?

A In January.

Q Of what year?

【851】 A '55.

Q Now, you were there — look at your book and tell us the first time you went to work in January.

A What year?

Q 1955.

A I didn't go to work in January 1955.

Q When did you go to work?

A May 9.

Q In other words, you were off from September 1954 to May 9, 1955, is that right?

A That's right.

* * * *

Q And you didn't go back to the hall looking for work until May 9, 1955, or a day or two before that?

A No, I had went down there several times before.

Q How many times did you go before?

A Well, I wouldn't know exactly because that has been so long.

【852】 Q Well, did you get work soon after you were there?

A No, sir.

Q How long was it after you first notified them that you were back looking for work that you got work?

A I got work May 9?

Q You got work May 9?

A That's right.

Q Now, my question is, you had to tell somebody you were ready to work, didn't you?

A I did.

Q And is that the first time you were called to work, May 9?

A (No response.)

Q Who called you May 9, Mr. Linnenberg?

A Mr. C. B. Morrow.

Q Now, how long before that did you tell Mr. Morrow you were ready to go to work?

A About a week or so before that.

Q Let's take May 9, and take a week off, and bring it down to May 1. That is nine days. Would that be fair enough?

A All right.

Q Would it be proper to say when you left the hall in September 1954 you did not come back any more until about May 1, 1955? That would be correct, wouldn't it?

A That's right.

[853] Q Now, after May 9, the time you worked, how much did you earn out of the hiring hall throughout the remainder of the year, from May 9 to December 31, how much did you earn?

A \$906.74.

Q And you were allowed only \$1200.00 in 1955, weren't you?

A That's right.

Q So you made \$294.26 less than \$1200.00?

A That's right.

[854] Q Isn't it a fact that you worked during the week of May 14, 1955?

A I worked May 13, 1955.

Q Well, we are using the 14th, which is the week ending period.

A Yes. Well, I got the exact date I worked.

Q You worked for Tidemann then?

A I worked for Texas Transport and Terminal Company.

[855] Q All right.

Did you work for Lykes that week?

A No, sir.

Q You worked for Tidemann. All right.

Now, did you work in the week ending May 21 for the Port Commission?

A Yes, I worked for the Port Commission.

Q All right.

And also Texports?

A What time for them?

Q During the week of May 21, the week ending May 21. It would probably somewhere between the 17th and the 21st of May.

A No, sir.

Q Are you sure about that?

A I worked on May 13 for the Texports.

Q We are through with that. I am getting into the next week, the week ending May 21. You worked for the Port Commission and also —

A I didn't work for Texas Transport and Terminal Company in 1955 in that week.

Q If the union's records show you did work, would you say they were wrong or that you were right?

A Well, I am right here, according to my record.

Q All right.

Did you work for the Port Commission and the Atlantic
[856] Gulf during the week ending May 28?

A Yes, sir, Atlantic Gulf.

Q Did you work for the Port Commission during the week of June 4th?

* * * *

[857] Q (By Mr. Crystal) We are talking about the week ending June 4, 1955. In other words, every date that I give you is a Saturday.

A You want me to answer that?

Q Yes.

A Yes, I worked —

Q For the Port Commission?

A June 6, or the 3rd, rather.

Q Well, that is before the 4th?

A Yes.

Q Now, didn't you work for the Port Commission the week ending June 11, the next week?

A I wouldn't know if the 6th would be in the 11th or not, and that is the only day I worked up until the end of the month.

Q That is after the 4th. You worked on the 6th, is that right?

A Yes.

Q All right.

Did you work after the 11th, during the week ending the 11th — during the week ending the 18th?

[858] A No, sir, not for the Port Commission.

Q Well, did you work for Biehl?

A No, sir — wait a minute — no.

Q Who did you work for?

A I didn't work for anybody in that week.

Q I thought you said you worked June 13.

A No, I said I worked June 6.

Q All right.

Now, did you work the next week?

A That would be the 13th? No, not the 13th.

Q All right.

Did you work the first week in July?

A July 1, yes, sir.

Q Did you work after July 1 up to the week ending with the 9th?

A July 5. I imagine that would come under that, wouldn't it?

Q That was for the Port Commission too?

A That's right.

Q Both days was for the Port Commission?

A Right.

Q Did you work after the 16th and before the 23rd of July?

A 23rd of July?

Q No. Get back.

A July 6 to the 12th.

[859] Q Well now, you have July 6 there?

A Yes.

Q All right.

Pass the 9th and see if you worked on the 10th and 11th.

A I worked on the 11th and 12th.

Q You worked for whom?

A Port Commission.

Q Did you work for Tidemann too?

A Tidemann, yes, I worked on the 6th.

Q Now, let's go back to the next week ending July 23. The date would be between July 16 and July 23.

A July 16 to July 23?

Q Yes.

A Yes, I have Port Commission one day.

Q You also worked for Lykes?

A Yes, I worked for Lykes four and a half hours.

Q Now, go to the next week. Did you work between July 23 and July 30?

A I worked for the Port Commission on the 26th.

Q Now, did you work between July 30 and August 6?

A Wait a minute here — I found Port Commission here. I got some more. The 27th, 28th, and 29th.

Q Of July?

A That's right.

Q All right.

[860] Did you work between July 30, from July 7, just keep turning your pages, and get between July 30 and August 6.

A I worked for Biehl & Company August 1.

Q Is that all?

A No. This is the 11th, next.

Q Stay between July 30 and August 6.

A I worked August 1 for Biehl & Company.

Q Now, the week between August 16 and — did you work between August 6 and August 13?

A Yes, sir.

Q All right.

Did you work between August 13 and August 20?

A Yes, sir.

Q Did you work between August 27 — between August 20 and August 27?

A Yes, sir.

Q Did you work between August 27 and September 3?

A Yes, sir.

Q Did you work between September 3 and September 10?

A Yes, sir.

Q Did you work between September 10 and September 17?

A Yes, sir.

Q Did you work between the 17th of September and the 8th of October?

A No, sir, no more days worked.

【861】 Q You mean you didn't work after that any more?

A No, sir.

Q Are you sure?

A The 17th of October was the last day.

Q Did you work between September 17 and the 17th of October?

A 17 — September 17?

Q Yes.

A Yes. Wait a minute. September 2 — no, I worked October 6 and 7, 14 and 17. That is all in October.

Q Are you sure you didn't work between the 17th and the 22nd?

A I don't have no record of it right here before me.

Q What did you say to that last question?

A I don't have any record of it.

Q You don't have any record of it.

Well, do you recall working during the week ending October 15 for the Port Commission?

A Yes, sir.

Q And do you recall —

A Not for the Port Commission October 15, no, sir. For Lykes Brothers.

Q Well, let's see if you didn't work for Lykes Brothers between the 15th and the 22nd, Lykes, Master Stevedores and Biehl during that week.

[862] A I worked for Lykes Brothers on the ship "DEL VALLE" and then "DEL VIENTO".

Q And is that the last time you worked?

A That's right.

* * * *

Q Mr. Linnenberg, according to your statement and according to your records, according to our records, the union records, the last time you worked was during the week ending October 22, 1955.

A I imagine this date of October 17 would come under that.

[863] Q Yes, it would come within that week.

A Yes.

Q Now, isn't it true that you have not been back to the hall since then?

A Oh, yes.

Q All right.

Now, why did you leave when you did?

A Because I wasn't getting any more work. Why

should I go down there and hang around every day and not get any work?

* * *

Q The question is: You worked in every week beginning May 9 through October 22, didn't you?

A That's right.

Q And there are many members of Local 1351 that go weeks without working?

A You mean button men?

Q Yes.

A No, they don't go a week.

[864] Q How many days do they go without working?

A Very few go over a day.

Q Do you keep records on their work?

A No, I don't keep records on their work.

Q You are just guessing at that, aren't you?

A (No response.)

Q When you left there on October 22 nobody told you to leave, did they?

A Not as I know of.

Q Nobody drove you off and told you to get away from there, did they?

A No.

Q You just left of your own accord, isn't that right?

A No need to hang around; I wasn't going to get any more.

Q You worked the week that you left?

A Yeah.

* * *

[870] Q (By Mr. Crystal) You knew that this case had been settled, didn't you?

A Which case?

Q The Charge that you filed November 17, 1954.

A I heard of it, yes.

■ * * *

TRIAL EXAMINER:

Didn't the witness work in June 1955?

MR. WHITTAKER:

He was working, according to General Counsel's Exhibit 35-B in May and June 1955.

MR. CRYSTAL:

And in July, August, September, and **[871]** October.

MR. WHITTAKER:

That's right. It's the theory of the Government that while the notices were posted they gave him work, and the notices were taken down and they took him off.

MR. CRYSTAL:

We stipulate he worked on through after he knew the settlement agreement had been approved and withdrawn. We will stipulate that is a fact.

MR. WHITTAKER:

The settlement wasn't withdrawn.

MR. CRYSTAL:

You have a letter there showing it was withdrawn.

MR. WHITTAKER:

That is the Charge that was withdrawn.

MR. CRYSTAL:

All right. And the settlement agreement was made.

MR. WHITTAKER:

And he went to work under the settlement agreement.
That's right. That is exactly what we are contending.

* * * *

[882]

REDIRECT EXAMINATION

* * * *

[887] Q (By Mr. Whittaker) Now, part of 37-A is days you were available in 1955?

A Those days I didn't report I was available though.

Q You were available at home?

A That's right. Mr. Morrow would call me at home quite a number of times.

Q And the rest of this document, what is it, is that your handwriting?

A That's right.

Q Is that your diary of the things that happened in 1955?

A That's right, and October 10, 1955.

Q In connection with your going down to the hall looking for work?

A Yes, sir. . . .

* * * *

【891】 Q (By Mr. Whittaker) On October 13, 1955, if you will notice your diary there, did you get a telephone call from Mr. Logan, the acting business agent?

A Yes, sir.

Q About what time?

A That was in the evening, 5:30.

Q And what was the call for?

【892】 A He wanted to know if I wanted to go to work, and I told him yes, sir, and he says, "You report in the morning to Lykes Brothers."

MR. CRYSTAL:

May we have the date?

TRIAL EXAMINER:

October 13, 1955.

Q (By Mr. Whittaker) Now, if you look here at the notes you had heretofore, October 18, 1955 says "Reported at the union hall 6:30 a. m."

A Yes, sir.

Q Who is Mr. Wise here?

A That is Wise's stepson.

Q Of who?

A He was the stepson of Mr. Wise, the permit man.

Q Mr. Wise is the permit man, and his stepson was there at the hall?

A That's right.

Q How long had he been working out of the hall?

A Just but a short while.

Q You say about a month, is that right?

A That's right.

Q And was he sent out?

A Yes, sir, he was. He was sent out to City Dock 12 that day.

Q You made a note that Vinson left around 10:00 a. m., is that right?

[893] A Yes, sir.

Q But you stayed until 1:00 p. m.?

A That's right.

* * *

[898]

EXAMINATION

Q (By Trial Examiner) ...

* * *

[901] Q Mr. Linnenberg, did you work as a checker?

A I did, sir.

* * *

[905] Q After you went back to work in May of 1955 and worked a period of time, then you stopped going to the hiring hall, is that right?

A That's right.

Q You stopped letting them know you were interested in working, is that correct?

A That's right.

Q When did that occur?

A In September, approximately.

[906] Q 1955?

A Yes, sir.

Q Why did you stop letting them know?

A Well, I wasn't getting no work so there was no need then.

* * * *

[909]

RALPH E. SCALF

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) ...

* * * *

Q Who are you employed by?

A Hansen, Tidemann Steamship Company.

Q In what capacity?

A As Chief Clerk.

* * * *

Q How long have you been chief clerk.

A Well, since I have been with the company, about nine years, [910] I believe, eight or nine years.

Q Are you a member of Local 1351?

A I am.

Q How long have you been a member?

A Well, I don't recall. I was a member and I was out of the union a while, and I came back in the union again, and I don't remember just what year it was.

Q Has it been in the past ten years you have been a member?

A Yes.

Q Have you held any office in the Local?

A Yes.

Q What office?

A Vice-president.

Q Do you recall when that was?

A I believe around 1948 or 1949, something like that.

Q Have you served on the Negotiating or Contract Committee?

A At that particular time, yes sir, that one time.

Q Was that back in 1946?

A When I was vice-president, yes sir.

Q At that time were you with Hansen and Tidemann or someone else?

A I was with Bloomfield Steamship Company.

Q What job did you have with them?

A The same as I have with Hansen, Tidemann.

Q Chief Clerk?

[911] A Yes, sir.

Q Do you attend the union meetings?

A Not too regularly, no sir.

Q Do you pay your percentage?

A Yes, sir.

Q How do you pay it?

A How do I pay it?

Q By check, by cash —

A Cash, usually, yes sir.

Q In person?

A Yes, sir.

Q You go down to the hall?

A Yes, sir, twice a month.

* * * *

Q What is the general business Hansen and Tidemann is engaged in?

A Well, I would say general cargo, steel, cotton.

Q Are they steamship agents?

A Yes, sir, agents.

Q Do they own any of their boats?

A No sir, I don't believe.

Q Do they do their own stevedoring?

[912] A Well, I believe there is a subsidiary stevedoring company.

Q And the name is what?

A Gulf Stevedores.

* * * *

Q Are there any other salaried clerks on the company's payroll?

A Yes, sir.

Q How many?

A One.

Q What is his name?

A Robert Laird, Sr.; I believe it's senior.

* * * *

[913] Q When you have occasions to use an extra checker how do you secure the services of one?

A By calling the business agent.

Q C. B. Morrow?

A Yes, sir.

Q And when you do that, what procedure do you go through?

A Well, I ask him for the clerk that I want or the checker that I want.

Q Do you always order by name?

A Yes, sir.

Q How long have you been ordering by name?

A Oh, let's see — since, I would say since 1944, 1943, [914] something like that. I don't recall just when it was, maybe 1954.

* * *

[915] Q (By Mr. Whittaker) How much authority do you have over these extra checkers or clerks?

A Well, I guess all that is to be had. I hire them and I tell them when I am finished with them.

Q Do you have to consult Mr. Patton if you wanted to hire a monthly man?

A Well, yes, I would have to go to the office and consult Mr. Patton and Mr. Tidemann too, I am sure, if we were hiring a monthly man. I have, in the past.

Q Now, do you recall sometime in June and July or August, 1955, there were some NLRB notices posted around the waterfront?

A Yes, sir.

Q Have you changed your method of hiring extra clerks and checkers since those notices were posted?

A No. I still call them in that I want to do my work.

Q Still do it the same way?

[916] A Yes, sir.

* * * *

[917] WILLIAM C. MANN

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) ...

* * * *

Q Who do you work for?

A Fowler & McVitie, Inc.

Q What job do you have with them?

A Well, I am the clerk, the only clerk they have, so I guess it would be chief clerk.

Q There are no other salaried clerks or timekeepers?

A No, sir.

Q Who is your immediate superior?

A Mr. Crocker.

Q What job does he have?

A Well, he owns the company.

Q How long have you been chief clerk for Fowler & McVitie?

A I am not for sure when I went to work, something like three years.

[918] Q Are you a member of the Clerks and Checkers Union No. 1351?

A Yes, sir.

Q How long have you been a member of it?

A Well, I believe either the latter part of 1946 or the first part of 1947.

Q Have you held any office in the Local?

A Well now, what do you mean by that? President or vice-president?

Q Yes.

A No.

Q Have you served on any committees?

A Yes, sir.

Q What committee?

A I was on the Contract Committee several years ago.

Q Were you on it this last time too?

A Yes, sir.

Q I believe the Local advanced you some expense money in 1956 in connection with that work, didn't they?

A 1956, you mean this year?

Q Probably this year, but I have records for 1956.

A Yes sir, they pay you for your trips, your expense and your days.

Q Are you on any other committee this year?

A Well, I have been told I was. I had forgotten about being on a committee.

[919] Q Is that the Nominating Committee?

A That is what someone told me yesterday. I didn't remember being on it. We have so many committees, sometimes it's hard to keep up with it.

Q Have you done any work yet on that committee?

A No, sir.

Q Do you know what your duties are as chairman?

A Yes sir, I do.

TRIAL EXAMINER:

Did I hear you say "As chairman"?

MR. WHITTAKER:

Yes, sir.

Q (By Mr. Whittaker) Are you chairman of that committee?

A Yes sir, that is what I was told, I was chairman of the committee.

Any names that are submitted to be taken into the Local, we examine their application and more or less pass on it or recommend to the Local as to what we think, is all.

* * * *

[920] Q What kind of operations is Fowler & McVitie engaged in?

A They are agents for NYK Line, a Japanese line. They have one regular line runs in here, comes in once a month. They do their own stevedoring.

Q Fowler & McVitie does their own stevedoring?

A Yes. It's under another name.

Q What is the name of that?

A Liberty Stevedoring Company.

* * * *

[921] Q Did you ever work for Lykes Brothers?

A Yes, sir.

Q What was your position at Lykes Brothers on the last job you held?

A I was chief clerk.

Q How long ago was that?

A About three and a half years.

Q Do you have occasions to order extra checkers or clerks or timekeepers from Local 1351?

A Well, in my present position, not too much. You see, one line, and also, we have a lot of inbound — of course, I do the clerking and I do order the timekeeper. That is the main thing we have now, the timekeeper, and one clerk.

Q What procedure do you follow when you order someone from Local 1351?

A I just call the business agent and tell him I want some men, how many I want, or if it's a timekeeper I usually ask for the same one each time because he is familiar with our system and — well, there are two or three I have used quite **[922]** often, and if it's one of the three, it makes less work on me showing them what to do; so, I usually try to pick out who I want. And most of the time, if I do need checkers, the same procedure, I will see who he has on the available, and pick out who I want.

Q You pick out your checkers too?

A Whenever I use any.

Q Well now, was that the procedure you followed before the notices were posted down on the docks back in June through August of 1955?

A Well, as well as I remember, at one time they had some kind of a ruling you could pick them by name if you paid them the ten cents extra, or something. I don't know.

I think nearly always you could get who you wanted anyway, whether you were paying the dime or not.

Q You don't remember when that was discontinued, do you?

A No, I don't.

Q Do you pay a percentage to the Local?

A Yes, sir.

Q How often do you pay that?

A Well, twice a month. We get paid every two weeks on a regular salary.

Q Do you pay it personally or by mail?

A Personally.

Q By check or cash?

[923] A Most of the time I pay by check.

Q Do you know how the extra clerks and checkers that you order are paid?

A By check.

Q And are the checks made up in the Fowler & McVitie office or where?

A Well, they were, they came out of Galveston for awhile, I think. I don't know for sure whether they are made up at Galveston or not. Right now, I am not sure. You see, that IBM system went in. I don't know whether they are using that or not. Some companies do, and send them down there. I don't know whether they get a regular check from Fowler & McVitie or if it comes out of the IBM. The system just went in recently about —

TRIAL EXAMINER:

Wait a minute.

Q (By Mr. Whittaker) Yes. I think we have it here that it went in in July, 1955.

What authority do you have over clerks and checkers, timekeepers that you ordered?

A Well, I tell them what to do.

Q Is there any supervisory authority that you don't have over them?

A No, I don't understand what you mean.

Q Can you fire them any time you want to?

A Yes sir, sure can.

[924] Q And you can pick them out by name if you want to?

A Well, I always have.

* * * *

TRIAL EXAMINER:

The Nominating Committee you serve on, does that have anything to do with nominating officers?

THE WITNESS:

I believe that wasn't a nominating committee. That is an examining committee.

TRIAL EXAMINER:

At any rate, you don't have anything to do with nominating officers?

THE WITNESS:

Yes, sir, anybody who is a member of the Local and is present at a meeting.

TRIAL EXAMINER:

Yes, sir. My question was poorly worded.

As a member of that nominating committee, that committee doesn't have anything to do with getting up a slate of officers for the coming year?

THE WITNESS:

No, sir.

* * * *

G. R. VINSON

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * * *

[1925]

DIRECT EXAMINATION

Q (By Mr. Whittaker) ...

* * * *

Q Have you worked out of Local 1351?

A Yes.

Q For how long a time have you worked out of that Local?

A Well, I went out there and signed up on July 1, 1946.

Q And when is the last time that you worked out of it?

A The last day?

Q Yes.

A Well, let's see. I will have to look up my records here — wait a minute. I can tell you.

Q Without being exact, was it sometime around July, 1956?

A Yes. I went out there until July 1, 1956, and sat around the hall, but I didn't work. I made myself available around the first of July, 1956, but the last day I worked and drew pay was on the 10th of November, 1955.

Q What is that you are reading from?

A This is a book that I kept a record of all the days that I worked and who I worked for and what I made.

* * * *

[929] Q (By Mr. Whittaker) I show you what is here as General Counsel's Exhibit 28, Mr. Vinson, and ask you if you have ever signed one of those, filled it out and signed it, for Local 1351.

A Yes, I think so.

Q Do you remember when you signed it?

A No, I don't remember when I signed it.

Q Do you remember bringing a copy of it up to our office?

A Yes, I believe I remember bringing it up there. I believe I remember bringing it up there.

Q Did you ever return it to Mr. Morrow?

A Well, I tell you, I just don't know. But I had several of these — I mean, I filled out one, but I had several blanks out at the house. Whether I turned it over to C. B., I am not sure. I know I signed it. But I am not sure about that.

[930] Q Did you abide by the terms at the bottom?

A Yes, I have always abided by the terms out there.

Q In other words, you paid your percentage?

A Yes, paid the percentage.

Q Agreed to designate them as your bargaining agent?

A Yes sir, and stay sober.

TRIAL EXAMINER:

Strike the last line in the remark from the record.

THE WITNESS:

I beg your pardon, Judge.

TRIAL EXAMINER:

Mr. Vinson, we will get along much faster if you will just answer the questions.

Q (By Mr. Whittaker) Now, did you file any charges against Local 1351 in Case 39-CB-91?

A Yes sir, we filed charges, I did.

Q Is that your signature on GC-1-AA?

A Yes, sir.

Q And later on did you sign that withdrawal request there, which is GC-1-CC?

A Yes, sir. That is my signature there. I signed it.

* * * *

[931] Q (By Mr. Whittaker) Mr. Vinson, I will show you General Counsel's Exhibit 1-E, original charge in 39-CA-524, dated October 6, 1955. Is that your signature?

A Yes, sir.

Q And then I will show you the original charge in 39-CB-124, dated October 6, 1955, marked here as General Counsel's Exhibit 1-P, and ask you if that is your signature.

A Yes, sir.

Q Do you recall when the notices were posted in the hall of Local 1351?

A Yes, sir, I do.

Q And do you recall when they were taken down, do you remember about when that was?

A I believe it was some time in August, last August or September; I don't remember the date.

Q Of 1955?

A Yes, sir.

* * * *

[933] Q Have you ever worked as a timekeeper?

A No, sir.

* * * *

[935] Q (By Mr. Whittaker) Did Mr. Morrow offer you a job timekeeping?

A Let's see. On October 10, about 4:00 o'clock, C. B. called me and said he had a timekeeping job for me down at Berth 8. I said, "C. B., I never keep time."

And he raised his voice like he was mad and told me that I was — it looked like I was trying to pick my job. And then he switched over on Dave McGovern and said, "You tried to bribe Dave McGovern —"

MR. CRYSTAL:

I object to anything about Dave McGovern as being hearsay.

TRIAL EXAMINER:

Overruled.

Go ahead.

A (Continuing) He said I had tried to bribe Dave McGovern \$25.00, and I told C. B. I loaned Mr. McGovern \$50.00 to pay on a car note.

TRIAL EXAMINER:

We have this conversation occurring the 10th of October. What year, please?

THE WITNESS:

1955.

TRIAL EXAMINER:

Thank you.

Q (By Mr. Whittaker) Give us the rest of the conversation.

TRIAL EXAMINER:

Excuse me. I thought he had.

A Than C. B. said did I want to work all the time, and I told him no, I just wanted a fair share of the work and I also [936] told him that I had not worked any from September 3 in 1955 to September 28.

And then he said, "I want you to understand, you old son of a bitch, if you keep coming out here somebody is going to knock you in the head and beat you up."

I told him the NLRB had told me it was all right to go to the hall.

And then he said, "I want you and Lennenberg to understand that you are not welcome out here." And he also had previously told me that I was not welcome.

Q Then what happened?

A He hung up then.

* * * *

Q (By Mr. Whittaker) In these previous telephone calls you received on October 8 and 9, 1955, was this apparently the same voice or difference voices?

A No, it was the same voice.

MR. CRYSTAL:

Same voice as whose?

THE WITNESS:

The man that was talking to me.

[937] Q (By Mr. Whittaker) Did you ask the man what his name was?

TRIAL EXAMINER:

Did you recognize the voice on the 8th and the 9th as Mr. Morrow?

THE WITNESS:

I know C. B.'s voice.

TRIAL EXAMINER:

It was not him?

THE WITNESS:

No.

Q (By Mr. Whittaker) In your first conversation what was said?

MR. CRYSTAL:

We are going to object to him telling about any conversation until he identifies the person or connects the person with the respondent unions.

TRIAL EXAMINER:

Your objection is noted and overruled.

Q (By Mr. Whittaker) You may answer.

TRIAL EXAMINER:

And you may have a standing objection to any question concerning these anonymous telephone calls.

A Well, of course, the first threatening telephone call came on Saturday morning, May 8, 1955, and someone called —

Q (By Mr. Whittaker) May 8?

A Not May 8. October 8, and called me over the phone between 10 or 11:00 o'clock, but would not give his name.

Q What did he say to you?

A He disguised his voice, looked like, and said, "You better stay away from 1351; you may get hurt."

And then that same day —

TRIAL EXAMINER:

Was that all of that telephone conversation?

[938] THE WITNESS:

Yes, sir, that part of it.

TRIAL EXAMINER:

That is all there was?

THE WITNESS:

Yes, sir.

Q (By Mr. Whittaker) Did he say anything else?

A No, he didn't. He just hung up. I started to say something, but I heard the phone click.

Q O. K.

What was the next telephone call?

A Well, it was — it was later, between 4 and 5 o'clock, two more calls, and the same identical threats were made, and the fellow hung up before I could even say anything.

Q Then on Sunday, they just rung the phone, is that it, there was no conversation?

A Wait a minute. On Sunday afternoon, October 9, about 1:00 o'clock, I received another call, and this man made the same threats.

Q Was it the same disguised voice?

A Yes, I believe it was.

Q Did you get any more calls on Sunday?

A Yes, I got, on October 9, that same afternoon, around 3:00 o'clock, and 6:00 o'clock. Both times, after I put the receiver to my ear and said, "Hello," he hung up, and I could hear the phone ring. He didn't say anything.

Q Now, was that all the threatening calls?

A Yes, I believe it was.

* * * *

[941] Q (By Mr. Whittaker) Following this, during the year 1955, did you have any trouble with your car being molested at the hall?

A I did.

Q Now, do you remember the first time, do you have the date?

A Yes, I have the date here. That was on November 7, while my car was parked out in front of the hall on a side street, Leo Shepherd stuck a match stem on the valve core while A. B. Wise watched for him.

MR. CRYSTAL:

May I ask a question on voir dire?

TRIAL EXAMINER:

If there is no objection.

MR. WHITTAKER:

O. K.

VOIR DIRE

Q (By Mr. Crystal) Did you see that done?

A I didn't see with my own eyes.

MR. CRYSTAL:

I object to what somebody told him as being hearsay.

TRIAL EXAMINER:

Mr. Whittaker?

MR. WHITTAKER:

All right. Strike it.

TRIAL EXAMINER:

Strike it.

DIRECT EXAMINATION (Continued)

Q (By Mr. Whittaker) On this date how did you find your car?

[942] A The tire was almost flat and the match stem was in the valve core in the lefthind wheel, and this man was riding with me — you want me to say that?

Q Who was riding with you?

A Arthur Craig was riding with me at the time, and I think Mr. Wright was there, but he didn't see it; but Arthur Craig said, "You better look down at your tire there; I think you will find something."

Q How did you get it fixed?

A Well, I tell you, the air was about half out, and I pulled the match stem out, drove around the block to a filling station and put some air in my tire.

* * * *

[943] Q (By Mr. Whittaker) Now, did this happen again or not?

A Yes. It happened on November 28, and the left front tire had all of the air out, and I had a longshoreman going out to the hall help me change tires.

Q Well now, did you do anything to try to keep them from letting the air out of your tires?

A Yes. I went to several law enforcement officers up town.

Q Well, at the hall, where did you park your car?

A I was parking it at that time in front of the — out on the street. That was the last day I ever parked it out there. I parked it up in front of the door from then on, close to the door.

Q Why did you do that?

A To keep them from — so I could watch it, look through the blinds out there and watch my tires and see that no one let the air out.

Q Those are venetian blinds, aren't they?

A Yes, sir.

Q Now, do you remember a specific instance in which you [944] opened the venetian blinds so you could watch your car?

A I tried to open those Venetian Blinds every morning; and one morning I was sitting in the hall —

Q What day was this now?

A It was on December 2. I was sitting in the hall about 7:30, C. B. walked to the front door and closed the Venetian Blinds. I had opened them, or somebody else opened them; I opened them almost every morning on the front door in order that I could watch my car.

Q Are they normally kept closed in the morning?

A No. The men around the hall usually open all the Venetian Blinds.

Q In regard to C. B. Morrow's office, how far is it, how far is his office door from the front door?

A Well, it's really at the far end of the building. I don't know how long that hall is, but his office is — you go in the front door right in the middle of the building and walk catty-cornered across the hall going in the back, and he has a small office in the back there.

Q Well, could you pick out an object in here that would be about as long as the hall?

A Well, I believe this room may be a little bit longer than the hall, just like that was the hall, just like that was the front door over yonder, why, C. B.'s office would be over there in the corner.

[1945] Q It would be about 75 or 80 feet?

A Well, I guess so.

Q Mr. Linnenberg — pardon me — Mr. Vinson, excuse me, did you receive a telephone call from Mr. Morrow on May 8, 1956?

A I did.

Q About what time of day was it?

A About 10:30 a.m.

Q Where were you at the time?

A I was at home.

Q Give us this telephone conversation.

A Well, C. B. called me and he said he wanted to talk to me but he didn't want me to tell the NLRB what he wanted to talk to me about.

And I said, "C. B., our case is in the hands of the Labor Board and whatever you tell me I will have to tell them."

And well, I told Mr. Linnenberg — I was in with Mr. Linnenberg —

MR. CRYSTAL:

I object to him testifying what he told Linnenberg.

Q (By Mr. Whittaker) This is a conversation, isn't it?

MR. CRYSTAL:

We are not a party to that conversation.

TRIAL EXAMINER:

This is a conversation between you and Mr. Morrow?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

That is the conversation we want.

[946] MR. WHITTAKER:

He is relating the conversation he had with Mr. Morrow about Linnenberg.

A (Continuing) I told C. B. I had gone in with Mr. Linnenberg in this case and whatever happened we would have to tell the NLRB.

He then told me that Mr. Linnenberg was out of the case and had nothing whatever to do with it and hadn't been down to the hall that year. That was in '56.

Q (By Mr. Whittaker) Yes.

A So then, he told me that the Union if necessary was going to take the case through the State Court and all the way to the Supreme Court of the United States. And he also told me that if I, not we, had not brought this case up that I would have been at work like Wright and some of the others.

I told him that I had heard that several of us would be placed on Social Security and as long as I was able to work I wanted to work.

He said that I got all of this from old drunkards, like Craig. He said, "Now, you see what Wright is making. Now, don't tell the NLRB what I said." And that is all.

Q And he hung up then?

A Yes, sir.

Q Who was Wright?

A Mr. O. O. Wright, the man who rode with me until I quit going out there. He was the one that testified here.

* * * *

[955] Q Did you have any illness in 1955?

[956] A Oh, just a bad cold is all.

Q I mean, was it sufficient as to keep you from reporting?

A Oh, no, no; no, I could work.

Q Did you have any illnesses in 1956 that would keep you from working?

A No, sir.

Q Now, you changed your method of reporting only the first three days of the week. When did you start that?

A I started that January 1, '56.

Q And why did you change to only reporting the first three days?

A The first three or four days. Well, I wasn't being sent out and, oh, you know, C. B. had told me I wasn't welcome down in 1351.

MR. EIKEL:

When is this? I didn't get the date on that.

MR. WHITTAKER:

January 1 or 2nd, 1956 he changed to reporting the first three or four days of the week.

Q (By Mr. Whittaker) Why did you stop reporting in July, 1956?

A I went to the Labor Board and asked Mr. Stephens what to do about it, and he said, "Well, if he isn't sending you out, I don't see any reason for you to go out there."

* * * *

[957] Q (By Mr. Whittaker) Then, according to your records, the last time you were sent out for work was November 10, 1955?

A That's correct.

Q What time of morning did you report at the hall?

A Well, I always went to the hall around 6:40. I was, I believe almost every time C. B. drove up, I was there.

Q And how long did you stay then? There has been some testimony about calls, which would be the first call back in 1954?

A As soon as C. B. walked in the hall, he got there along about 7:00, the phone would start ringing and he would go there and begin to answer it, then he would tell the different men to go out. Some of them he would call up over the phone. Some of them he would call there in the hall and tell where to go.

Q And if you weren't sent out, how long would you stay there in the hall?

A Well, up until January 1, '56 I stayed until around 10:00 o'clock, sometimes a little longer. But in 1956, the days that I went out there, I stayed until he called the men he was going to call there in the hall, and after he started calling the men from the Carloading Hall, the Deep Sea Hall, I didn't stay very long, long about 8:30.

[958] Q At that point, were all the men used up in the hall or not?

A Well, there would be some left there in the hall, a few, new ones that come in there.

Q Would there be any button men left?

A No, sir.

Q Would there be just a few permit men?

A Yes, a few.

Q Like Linnenberg?

A Yes, he was there several times — well, not in 1956, but along in '55 he was there.

Q Now, when you are out on a job working as a permit man and it comes time to wind up the job, who are the first people that are layed off?

A Permit men are first layed off.

Q Well, have you since May 18 of 1954 been on a job on which you were layed off ahead of members, button men?

A Yes, sir.

Q Do you recall any particular job?

A Well, it was over on some pineapple, but I don't believe that was but once. And then, on several times on steel boats for Lykes and also for "3T's."

Q Was this after May 18, 1954?

A Yes, I think as well as I can remember, I was layed off on a boat down at "3 T's" in August of 1955, and then —

Q Do you know the button men they kept on, do you recall [959] his name?

A No, I don't; no, I don't remember.

Q Was there any checking work left to be done when you were layed off?

A Oh, yes, there was plenty of that.

Q Well, do you recall any other instances in which you were layed off and button men were kept on?

A Since 1954?

Q Yes, sir.

A Well, I don't — that wouldn't concern me. I have seen that go on a lot, but when I was checking on pineapple, I was hardly ever layed off ahead of button men. However, I have been.

■ * * *

Q Did you always pay your percentage?

A Yes, sir.

Q Back in 1954 how much percentage were you paying?

A I was paying five per cent.

Q Do you know when it went to three per cent?

A Well, I think it was sometime in 1955; I don't remember just when. I could look on this.

Permit men five per cent, and I think around January 1 of [1960] this year, in 1955, I don't know just when it was the button men and permit men were both placed on five per cent.

Q January 1, 1955 you say the button men started paying five per cent?

A I am not sure about the button men, when they started paying.

Q Can you give us the date, the best you can, when they started collecting three per cent?

A Let's see. It was the tax to — the tax of the Union to levy dues on the —

Q Can you find the date there? And read it to yourself.

A On January 1 of this year, both button men and permit men were placed on five per cent dues assessment, around November 1 this year dues assessment changed

again and button and permit men were placed on a three per cent assessment, and this plan is still in effect.

Q And it's your recollection then it's around November 1 of 1955?

A Yes sir, that is what I —

Q Did you ever try to join the Local 1351 as a member?

A Yes, sir.

Q When did you first try?

A I wrote a letter to Dave McGovern — well, he was there, it was while he was there, I wrote two letters asking him about it, and he said the best thing, well, he said, "The best thing [961] for you to do is write a letter and I will take it up at a meeting we will have here." But I never heard of anything that came of it.

Q Do you remember the first letter, as to the year?

A Yes.

Q What year?

A It was in 1947.

Q When was the second letter?

A The second letter was in '48.

Q Did you write any more letters?

A Yes, sir. I wrote a letter every time they changed business agent, I wrote to John Brannan —

Q What year was John Brannan business agent?

A I don't remember just what year he was that. He died in office.

Then, after I — I wrote another one after Paul Marks went in.

Q Do you know what year he went in?

A I believe he was in somewhere in 1951 or '52. I

don't know. I never kept up with those dates when they went in office.

Q Did you write a letter to Mr. Morrow?

A No, sir.

* * * *

[1962]

CROSS EXAMINATION

Q (By Mr. Eikel) Mr. Vinson, did you feel you were receiving less than your fair share in 1954 during the times you have testified about?

A Yes sir, I was very much dissatisfied.

Q How much work did you want to receive, every day?

A No, but I wanted to receive about as much as I had made the previous years. I made over a thousand dollars a year. I believe it's something over a thousand dollars less in 1954, and a lot more than that. In years before that I received one year, I think, about \$4,700.00 or \$4,800.00.

Q What did you receive in 1953?

A I never have added that up.

Q Can you give us a rough idea?

A I believe it was somewhere around thirty-five or thirty-six hundred dollars.

Q And then in 1954 how much did you receive?

A I believe it was twenty-five hundred dollars something.

Q So you had about fourteen hundred dollars less?

A Well, just call it a thousand dollars less.

Q That is when you were dissatisfied in 1954?

A Yes. I was getting dissatisfied in the summer of 1954.

Q Then in 1955 you made about as much as you did in 1954?

A No, sir. In 1955 I believe I made about thirteen hundred [963] dollars.

Q So you made about twenty-five hundred dollars less in 1955 than in 1953?

A Yes, sir.

Q Then in 1956 you say you only went down to the hall occasionally, no more than two or three times a week, and it was July when you quit?

A That's right.

Q During that time, you were not sent out at all, is that right?

A That's right.

MR. EIKEL:

That is all.

Q (By Mr. Dowd) Mr. Vinson, did you ever leave the hall after reporting in the morning, before you heard any calls made to any other unions?

A Yes, sir — no, I didn't leave the hall; I never left the hall in 1956 until C. B. began calling Carloaders from the Deep Sea.

CROSS EXAMINATION

Q (By Mr. Crystal) How old are you, Mr. Vinson?

A 68.

* * * *

[1980] Q (By Mr. Crystal) Do you know which men in 19 — in 1351 are union and which are non-union?

A Well, I wouldn't know now. You see, I haven't been out there since July 1 of 1956.

Q Did you know on July 1, 1956 which men were union and which weren't?

A Oh, yes, I think I knew everyone there except the new ones that had just come in, and they were non-union.

Q Isn't it true on many occasions when the men went out and left you sitting there that some members were sitting there too?

A I don't —

Q Especially men your age?

A No. If they wanted to work they weren't there, they went out.

Q You never saw any men your age, members, sitting there and not go out while non-union members went out, did you?

A The non-union members went out last.

Q You never saw a non-union member go out and a man your age stay, a member?

A A man that had a regular job might come by the hall and stay a while, play cards, and go to the job, and a union man [1981] might stay there a little while, but not long, except on Saturday.

Q Isn't it true, Mr. Vinson, that on occasion members of your age are left behind while non-members go out?

A No. I tell you, if a union man wants to work, he works.

* * * *

[1987] MR. CRYSTAL:

Now, I want to call the Examiner's attention to the fact that the settlement agreement was approved by the Regional Director on June 6, 1955.

TRIAL EXAMINER:

June 6 or June 9?

MR. CRYSTAL:

I think it's May 9 and June 6.

TRIAL EXAMINER:

Let's get the settlement.

MR. WHITTAKER:

What is your point, Al?

TRIAL EXAMINER:

Approved June 9, 1955.

* * * *

[1996] TRIAL EXAMINER:

Gentlemen, do you gentlemen agree the rebate this gentleman got was the same kind of rebate all other men got as far as non-union men are concerned, paid in during a specified period?

MR. WHITTAKER:

Yes, sir.

MR. EIKEL:

We have no objection to that.

* * * *

【1002】

TRUETT H. HUTSON

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Whittaker) . . .

* * * *

Q Who do you work for, Mr. Hutson?

A Presently, I am employed with the United Fruit Company.

* * * *

Q . . . Are you a member of Local 1351?

A Yes, sir.

Q How long have you been a member?

A Since its organization, sir.

Q And have you served on the committee that engages in 【1003】 selecting the names of those to be passed on for members?

A State that again, sir.

Q Have you served on a committee which selects names of applicants to be passed on for membership?

A Not applicants, sir. I served on a committee for new membership, yes, sir.

Q What is the name of that committee?

A Membership Committee, sir.

Q I see. Were you the chairman of it last year?

A Yes, sir.

Q I believe you voted in members twice during the year, didn't you, sir?

A Two or three times, twice, yes, sir, I believe. That could be verified by the business agent.

* * * *

【1008】

CROSS EXAMINATION

Q (By Mr. Crystal) . . .

* * * *

Q What do you do for the United Fruit Company, what is 【1009】 your position there?

A I am clerk for them, sir.

Q And as clerk, do you select the men whom you are to use?

A Yes, sir.

Q Now, tell us, please, sir, how do you select your men, what do you do, what is the procedure you follow?

A I call up and ask for the men I want, trying to get competent men or men I figure can do my work properly.

Q In other words, you call Mr. Morrow and ask for the

men you want, whom you feel are competent to do the work you want, and you ask for them by name?

A Yes, sir.

* * * *

[1012] CLIFTON BOYD MORROW

resumed the stand and was examined and testified further as follows:

* * * *

DIRECT EXAMINATION (Continued)

[1013] Q (By Mr. Whittaker) Mr. Morrow, do you furnish any clerks, checkers or timekeepers to Bloomfield Steamship Company?

A I don't, now I don't. I think Bloomfield Steamship Company is out of business at the present time.

Q Well, have you in the past, since May of 1954?

A May of 1954, I am sure I did furnish clerks.

Q Did they have a chief clerk at that time?

A Yes, sir.

Q Do you recall his name?

A Well, in 1954 I am pretty sure it was E. B. Perkins.

Q Did he follow the regular procedure you described before in ordering extra clerks and checkers?

A Yes, sir.

Q What about Garcia Line Corporation, since May of 1954 have you furnished them with any clerks or checkers or timekeepers?

A Yes, I am sure I have.

Q Who ordered them from Garcia, if you know?

A To the best of my knowledge, at — Garcia is operated by Tidemann and — I mean Hansen & Tidemann, and Roy Scalf would order the men.

Q Have you furnished, since May of 1954, clerks, checkers or timekeepers to Texas Marine Transport Company, Inc.?

A Texas Marine Transport Company? Yes, sir, I have furnished clerks and checkers to them.

[1014] Q Do they have a chief clerk?

A They do now, yes, sir.

Q What is his name?

A B. A. Stockton.

Q Is he a member of Local 1351?

A Yes.

Q Does he follow the normal procedure in ordering clerks and checkers?

A Yes, sir.

* * * *

Q (By Mr. Whittaker) How does B. A. Stockton order extra clerks and checkers, Mr. Morrow?

A He calls the hall and asks for men by name, selects the men that he wants.

Q And how do you — and then you send the men out on the job?

A Yes, sir.

Q Have you furnished extra clerks and checkers to [1015] Canadian Gulf Line, Limited?

A Well, I haven't furnished them any checkers or clerks in the last year or so. I have furnished timekeepers.

Q Who orders the timekeepers from Canadian Gulf Line, Limited?

A Mr. Hans Mueller.

Q Is Mr. Hans Mueller a member of Local 1351?

A No, sir.

Q Does he use the normal procedure for ordering extra timekeepers?

A Yes, sir.

Q Have you furnished extra timekeepers, clerks or checkers to Suderman Stevedores, Inc. since May 1954?

A Yes, sir, I have furnished timekeepers.

Q Who orders the timekeepers?

A At the time, the walking foreman orders them.

Q Walking foreman is —

A I would say walking foreman, I guess he's the superintendent now.

Q Well, when he was a walking foreman, was he from the Deep Sea Local or Carloaders Local?

A He was from the Deep Sea Local. And the man before him was named Chester.

Q Was he from Deep Sea Local too?

A No, sir. He didn't belong to any local at all.

[1016] Q When you say "walking foreman," is that subject to change? It's not always the same person that would call?

A No. I would say the man they have now was a walking foreman, and I think they have promoted him to superintendent.

Q Do you know his name?

A His name is Archie Damphier.

Q Does he still order from you?

A Yes, sir.

Q As superintendent, is that a pier superintendent or dock superintendent you are speaking of?

MR. EIKEL:

We object unless he knows of his own knowledge.

TRIAL EXAMINER:

He can answer.

A I don't know exactly what title he has. I would just call it superintendent for Suderman Steamship Company, Suderman Stevedoring Company.

* * * *

Q (By Mr. Whittaker) So the record will be clear, what this scratch pad means, General Counsel's Exhibit 21, let's take a look at the page, the top or underside of the first page. There is a —

[1017] TRIAL EXAMINER:

Does it bother you if I look over your shoulder?

THE WITNESS:

No.

MR. WHITTAKER:

Mr. Examiner, if you want to ask any questions on this, break in.

TRIAL EXAMINER:

I think you will take care of what I want. I want to know what these various marks mean.

MR. WHITTAKER:

Well, I think it will shorten things if you have a question, just to break in on this.

Q (By Mr. Whittaker) Now, the date appearing on the second page there is 7-25-55, which would be on a Thursday.

Now, what does this "Linnenberg" with a check mark after him, what does that mean?

A You want me to explain this the best I can?

Q Please, sir.

A Well, I put the group of men, the names of these men up here —

TRIAL EXAMINER:

On the back side of Page 1, is that right?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

All right. Go ahead.

A (Continuing) They were put up here as ready for a job, to go out on a job.

And as I got my orders from the different companies, I put down on the next page, on the front of the next page, [1018] where these men should go and at what time.

And as I called them, I put a check mark up here signifying that they had went on the job.

TRIAL EXAMINER:

Check mark on the back of page 1?

THE WITNESS:

Yes, sir.

A (Continuing) And I also put a check mark and an X on the back of their name, I put an X to show they had went out.

Q (By Mr. Whittaker) Now, you are looking at Page 2?

A Page 2, yes, sir.

Q The front of Page 2?

A As I went out —

TRIAL EXAMINER:

Let's go ahead and carry it across. What does this mean?

THE WITNESS:

That means the company he worked for, Texas Stevedore Company.

TRIAL EXAMINER:

That is the last column on Page 2?

THE WITNESS:

Yes, sir.

Q (By Mr. Whittaker) He went out as a checker?

A He went out as a checker, yes, sir, to Texports Stevedoring Company. And when I contacted him by phone, I put a dash by the side of his name to show that he was working. And all the men with a dash by the side of their name were working at that time. Them that didn't have a dash wasn't working.

And I sent them men out. That was on the 7-25-55, [1019] 7-26-55, 7-27-55.

TRIAL EXAMINER:

Mr. Whittaker, may I break in a minute?

MR. WHITTAKER:

Yes, sir.

TRIAL EXAMINER:

Is this true or not? When you have names on the back of the page, like this on the back of Page 1, does that indicate the people that are available for work? And then, when they are on the front of a page, like they are on Page 2, does that indicate they have gone to work and you filled in the proper information to show where they went, when they went, and what they are doing?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

So this is really, referring to the back of the page, is really the list of those who are available, is that right?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

On the front of the page is a list of those who actually went to work; is that right?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

Thank you, sir.

Q (By Mr. Whittaker) And this column, the first column on the back of Page 1, Currie, Reid, Morgan, and Martin, are those the names of members who are out of work?

A Yes, sir.

Q Come to the second column headed by Linnenberg. Are [1020] those non-members?

A That's right.

Q Coming to the column headed K. Moore, that is non-members too?

A That's right.

Q Now, there is no significance in these last two columns?

A No, sir. In other words, it's just so I will have them in plain sight.

Q In other words, this was the available list for three days; is that right?

A Yes, sir.

Q That would be Thursday, Friday, and Saturday?

A Yes.

Q And then some Saturday on the next, the third page?

A That's right.

Q Now, if we go back here a moment, I had another question; this shows Linnenberg at what you call a dash, and I have been calling a check. What date did he work?

A Linnenberg was sent out on the 26th, 7-26. He was sent at 8:00 o'clock in the morning to the Port Commission.

Q And Vinson was sent with him, is that right?

A Yes, sir.

Q And a fellow by the name of Shepherd?

A Right, sir.

TRIAL EXAMINER:

Just offhand, I see Linnenberg's name [1021] on the available list, but I don't see Vinson's.

There it is. I see it. Thank you.

Q (By Mr. Whittaker) And Vinson, on the available list, has a dash or a check?

A Yes, sir.

Q Field up there just has a period. Is there any significance in that period?

A No, sir, I don't think so.

Q They weren't sent out, Craig wasn't sent out, Nelson and Holland weren't sent out?

A No, sir.

Q Do you know whether you telephoned Linnenberg and Vinson to take this job?

A I wouldn't remember that far back.

Q You have called them on occasion?

A Yes, I have.

Q And if they are on this list and they are not in the hall, you would call; is that right?

A Yes.

Q Now, we come to the back of the second page. That would be Field's name is on that, but Linnenberg and Vinson are not.

Do your records indicate that Linnenberg and Vinson were still working?

A Well, I am sure they were still working or they would [1022] have been on this available list.

After I finished this page, I transfer to the next page the men availble, still available for work; and if I have men still available for work —

Q Let me number these pages so we will be able to keep them straight. I will put the number in the lower right-hand corner.

* * * *

Q (By Mr. Whittaker) Now, I have numbered these pages from 1 to 46. Back of Page 2, from period 7-27, 7-28, and 7-29, that covers that period; is that right?

A Yes, sir. Yes, sir, part of 7-29-55.

Q Coming to the back of Page 3, there is Field again on the work list; is that correct?

A That's right, yes, sir.

Q And Linnenberg has a check mark, and Vinson later, further down, has a check mark?

A Yes, sir.

Q And that shows that Vinson on August 1 was sent to the Port Commission?

A That's right, sir.

Q And Linnenberg on August 1 was also sent where, Biehl [1023] & Company?

A Biehl & Company.

Q Now, each time, Mr. Morrow, now looking at the back of Page 4, the column over on the left, is that of the members, is that right, and any other columns, are those of the non-members?

A Yes, sir.

Q Here again is the name of Field and Linnenberg and Vinson. This time they weren't sent out, since there is no check mark after their name?

A Right, sir.

Q And that would cover the period of August 1, what is left of it, August 2, August 3, and August 4, and part of August 5.

Then, Page 6 starts off with August 6, and the out-of-work list up there on the back of Page 5 starts off again with Field and Linnenberg, who wasn't sent out, and Vinson who was not sent out.

A If you notice, there are quite a few other men that wasn't sent out too.

Q Yes, sir. I was looking for those three.

Each of those that does not have a check following his name was not sent out; is that correct?

A That's correct.

Q That covers down to August 9.

TRIAL EXAMINER:

Does that same pattern follow throughout [1024] the pages of this exhibit?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

I am sure the witness understood, but I am not sure the record does.

When I talked about a pattern that showed certain names, that is the available list and the front of the page is who went to work, where they went to work, and the time they worked; is that correct?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

And that is the pattern followed throughout this exhibit; is that correct?

THE WITNESS:

Yes, sir.

TRIAL EXAMINER:

Thank you.

Q (By Mr. Whittaker) Looking now at the back of Page 6, it starts off with Field and Vinson and comes down, and Linnenberg has a check.

Now, looking at Page 7, which is for August 9, August 10, August 11, and August 12, you see there on August 10 that Linnenberg and Vinson were sent to Biehl & Company as checkers?

A Yes, sir.

Q Along with Logan, huh?

A Yes.

Q Now, my question is this: Why wouldn't Vinson have gotten a check, wouldn't there be an erasure there if he got back before August 12, wouldn't he just erase it?

[1025] A Yes, sir, that's right. You can see where it's just been erased out, the check mark.

Q So while these out-of-work lists cover several days, you have occasion to change it?

A That's right.

Q And there may be a time here when it will show on

the top of the page or the back of the preceding page, that it's a blank spot after his name, no check mark, that is because on the last day perhaps he didn't work?

A That's right. It shows that on the 8th and 11th that Mr. Linnenberg and Mr. Vinson went down to Long Reach 8 for Biehl & Company. Well, he probably finished that afternoon and went back on the available list.

Q I see.

Now, L. R., when you have it, that stands for Long Reach?

A That's right.

Q And City, that is the Terminal Dock?

A Yes.

Q And Man Terminal is —

A Manchester Terminal.

Q You just put down M-a-n and T-e-r-m?

A Yes.

* * * *

[1026] Q (By Mr. Whittaker) Have you been able to check your books to determine when your members first started paying the five per cent?

A Yes, sir.

Q Could you give us that date?

A We had a meeting March 29, 1955, and the five per cent went into effect the first of March.

Q Was it retroactive?

A You mean —

Q Was your meeting on March 29?

A Yes, sir.

Q And the 1st or 8th of April, the first week in April

—

MR. CRYSTAL:

Mr. Examiner, this has all been gone into when he testified before. It's already in the record. I don't know why he wants to repeat it.

TRIAL EXAMINER:

I thought so too.

MR. WHITTAKER:

I beg your pardon?

MR. CRYSTAL:

It's all in there.

MR. WHITTAKER:

Well, this part isn't, to my recollection. I did not have a definite date as to this change.

MR. CRYSTAL:

March 29.

TRIAL EXAMINER:

Well, I have a double note on this March 29 date, one with respect to three per cent and one with respect to five per cent.

MR. WHITTAKER:

That is what I am trying to straighten [1027] up now.

TRIAL EXAMINER:

If you can fix the dates on it, go ahead.

Q (By Mr. Whittaker) Then for the week ending April 8, you collected five per cent from everybody?

A Yes, sir, from members and non-members.

Q And then when did you change it to three per cent for everybody?

A In November 1955.

Q And when you refunded their money to the members and non-members, was that at the five per cent rate?

A Yes, sir.

Q There was no three per cent money in it?

A Yes, sir.

* * * *

EXAMINATION

Q (By Trial Examiner) Before March 29, 1955 there was a difference in rates for members and non-members, was there not?

A Yes, sir.

Q And how long a period did that difference continue? What did it last from, do you remember?

A No, sir, I don't remember exactly when that started.

[1028] Q Can you give me an approximation whether it was six months, a year, or more or less?

A (No response.)

Q I think some paid two per cent and some paid three.

A You are asking me about when that started?

Q Yes, sir. You said on March 29, 1955 they voted that everybody should pay five per cent.

A Yes, sir.

Q Now, what was it just before that period?

A Just before that period it was two per cent plus dues and assessments for the members and five per cent for the non-members.

Q How long did that continue?

A Well, I don't remember exactly when that was started, sir.

Q Can you give us an approximation?

A (No response.)

Q Well, let's see. You took office as business agent January 1, 1954. Was that in effect when you became business agent?

A Yes, sir, that was in effect then.

Q All right.

Now, this rebate that the employees got, that was a rebate of percentages paid in between April and November, is that what it was?

A Yes, sir, it was a six months period.

[1029] Q Six months period. That is what I wanted to get; it was the same period for both groups?

A From April to September, I think.

Q And it was the same period for both members and non-members?

A Yes, sir.

Q And the same percentage was paid back to both, as far as percentage was concerned?

A Yes, sir.

* * * *

Q Well, here is what I am trying to find out, Mr. Morrow. There is no secret about it.

We have evidence in this record that there was a check stub somewhere — it hasn't been brought in — on the matter, and of course, checks were issued. Now, do you

know of any [1030] other written record with respect to this transfer of money from 1351 to Avenue N?

A No, sir, I don't know.

* * * *

[1043] MR. WHITTAKER:

Mr. Examiner, I'd like to offer General Counsel's Exhibits 7, 8, and 9.

TRIAL EXAMINER:

Wait a minute. Let's take it up slowly.

All right. Any objection to 7?

MR. CRYSTAL:

I don't know what they are, offhand. I would like to take a peek at them.

MR. WHITTAKER:

Here is 7, the Constitution and Rules of Order, and 8 —

TRIAL EXAMINER:

Wait a minute. Let's take them one at a time.

Let me see that, please.

(Document handed to Trial Examiner.)

TRIAL EXAMINER:

Now, one of these, 7 or 8, when it was offered before, was withdrawn because it was not the one adopted March 12, 1952.

MR. WHITTAKER:

I would like to substitute a more current one, Mr. Examiner.

TRIAL EXAMINER:

What will we do with this paragraph in the Complaint, Paragraph 7(a)? I think certainly if there is more current one we ought to have that one too.

[1044] Well now, is this document, 7(a), the one that is pertinent to 7(a) of the Complaint or the one that is pertinent to Paragraph 8(a)?

MR. WHITTAKER:

General Counsel's Exhibit 7 pertains to 8(a) of the Complaint.

MR. CRYSTAL:

That's exactly right.

MR. WHITTAKER:

And the section cited in the Complaint has not been changed. It's the same in both documents.

TRIAL EXAMINER:

Can you agree that the paragraph quoted in 8(a) of the Complaint was in effect at all times material to this case?

MR. CRYSTAL:

Let me see this old one and I can tell you.
Yes, sir.

TRIAL EXAMINER:

Thank you.

I take it you have a stipulation on that.

You still want it received in evidence, what has been marked for identification as Exhibit No. 7, in view of the stipulation?

MR. WHITTAKER:

Well, I don't guess it's really material.

TRIAL EXAMINER:

It's up to you.

MR. WHITTAKER:

I mean, I am not offering any other portions of it. So, I will withdraw my offer on 7.

TRIAL EXAMINER:

All right.

Exhibit 7 is withdrawn in view of the stipulation which General Counsel and the unions have entered into, and employers, [1045] while not entering into the stipulation, there is no objection to it and there are no issues in this case on the matters stipulated about.

(T h e document heretofore marked General Counsel's Exhibit No. 7 for identification was withdrawn.)

TRIAL EXAMINER:

All right. Let's take up 8. What is 8?

Can you do the same thing with respect to the document which is mentioned in Paragraph 7 (a)? Can you stipulate to the — can you stipulate those terms were in effect at the time specified in the Complaint?

MR. CRYSTAL:

I don't see it in here.

Will you point it out to me?

MR. WHITTAKER:

You are not looking at the right one.

MR. CRYSTAL:

Oh, you are looking at that.

MR. WHITTAKER:

Yes.

TRIAL EXAMINER:

I take it you gentlemen can stipulate that Paragraph 7(a) accurately reflects the provisions of the Constitution and By-Laws of Local 1351 adopted March 12, 1952, and in effect at the times material to this complaint.

MR. CRYSTAL:

Correct.

TRIAL EXAMINER:

Respondent employers while not agreeing to the stipulation do not object to it, and there is no issue herein with

respect to the matters quoted on Page 12 and 13 of the Complaint.

[1046] MR. EIKEL:

That is true.

TRIAL EXAMINER:

With that, you want to withdraw General Counsel's Exhibit 8?

MR. WHITTAKER:

Yes, sir.

TRIAL EXAMINER:

Withdrawn.

MR. WHITTAKER:

Paragraph 7(a) of the Complaint, Subparagraph (3) says Article II, "General Working Rules," and it should have said Article XX, "General Working Rules."

TRIAL EXAMINER:

All right. Thank you.

* * * *

[1048]

(The documents heretofore marked General Counsel's Exhibits Nos. 42-A through 42-C, inclusive, were received in evidence.)

* * * *

CLIFTON BOYD MORROW
[1061] recalled as a witness by and on behalf of Respondent Unions, having been previously sworn, was examined and testified as follows:

FURTHER DIRECT EXAMINATION

* * * *

[1062] Q (By Mr. Crystal) ...

* * * *

[1063] I hand you what has been received in evidence as General Counsel's Exhibit 10-A and ask you to read that paragraph (b) over very carefully, and I want to ask you a question about it.

Do you still operate under the provisions of that paragraph, pay any attention to it, in other words?

A We send all the men out by name regardless of what they pay them.

Q The employer under that paragraph has the right to hire all employees, including monthly men, is that right?

[1064] A Yes, sir.

Q You don't have anything to do with the hiring of these people, do you?

A No, sir.

Q If they call for certain people and they are there, you send them out?

A Yes, sir.

* * * *

[1080]

HERRICK VESTAL

recalled as a witness by and on behalf of Respondent Unions, having been previously sworn, was examined and testified as follows:

FURTHER DIRECT EXAMINATION

[1081] Q (By Mr. Crystal) Mr. Vestal, for the purposes of this record and the Trial Examiner here, will you just briefly describe the layout of 1351 hall?

A You mean the size of the area?

Q The size, the area it covers and with reference to any offices or enclosures within the hall.

A Well, the hall itself is in kind of an L shape; the front door where you enter into it, the hall itself is approximately twenty by thirty, twenty across and about thirty feet in length.

And the rear is a small office that connects to it that is approximately four by six feet, which is used by the business agent.

And toward the front is a small hall which is a rest room that you go through to get to what we call our conference room, which is small, I would say approximately six or seven feet by possibly ten feet.

* * * *

[1082] Q And now you use the book, which is General Counsel's Exhibit 21?

A Yes, sir.

【1083】 Q Now, Mr. Morrow keeps that book in his office, doesn't he?

A Yes, sir.

* * * *

Q All right.

【1084】 Now, tell us about the operations of the hall, just what do you do and how do you do it in operating your hall, in putting people to work, and so on?

A Well, other than Mr. Morrow uses this pad here to keep track of men that are available for work. Now, a man, if he finishes a job or is told that the job is finished, he is supposed to tell Mr. Morrow that he is available for work, either come by or sometimes they call in, sometimes they are off several days before they call in, don't want to go back to work.

But they are supposed to let him know when they are available. And when they let him know that they are available, then the name goes back on his book.

Q All right.

Now, I understood from Mr. Morrow's testimony that on March 29, 1955 you started charging five per cent to all members as well as non-members' percentages, is that right?

A That's correct.

Q And then you charged that — or rather you changed that to three per cent to members as well as non-members?

A Around November.

Q All right.

Then you refunded for a six-month period previous to November 1, 1955, all of the five per cent payments that were made?

【1085】 A Every one that worked in the hall, member or non-member.

Q Good.

* * * *

【1099】 EXAMINATION

Q (By Trial Examiner) Do you know why the rebate was given?

A The percentage rebate?

Q Yes, sir.

A The only reason it was given that I know of, we did have a little cash on hand and all the men were at the time, like any group of men, were wanting something for Christmas, and we didn't know of any fairer way to do it than to figure it on a percentage basis and take members and non-members and figure just the amount they had paid in for the six-month period. If they had paid in a hundred dollars, they would get 【1100】 a hundred dollars, and and if they paid in fifty dollars, they would get fifty dollars.

* * * *

【1155】 THOMAS J. MARTIN, SR.
a witness called by and on behalf of Respondent Unions,
being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

Q (By Mr. Crystal) Mr. Martin, by whom are your presently employed?

A Rice, Kerr & Company, Inc.

Q How long have you been employed by Rice-Kerr?

A I went to work October 1, 1956 for them.

Q Are you a monthly man?

A Yes, sir.

[1156] Q And you are chief clerk?

A Yes, sir.

Q By whom were you employed before you started working for Rice-Kerr?

A I was working —

Q Or did you have regular employment?

A I was working on a 40-hour guarantee for Isthmian Steamship Company.

Q How long did you work for them on the 40-hour guarantee?

A About a year and a half, approximately.

Q Did you have a steady job with any particular employer before that date?

A Oh, yes, sir, I was with Lykes Brothers.

Q And how long were you with Lykes Brothers?

A Approximately 21 years.

Q And during that 21-year period were you on a monthly salary?

A Yes, sir.

* * * *

Q Mr. Martin, when did you — are you a member of 1351?

A Yes, sir.

Q When did you become a member of 1351?

[1157] A July, either the 13th or 15th, 1955.

Q And you held your monthly job with Lykes for 21 years and you were a non-member of 1351?

A Yes, sir.

Q And you held a 40-hour job with Isthmian Steamship Company and you were a non-member?

A I was a member at that time.

Q In other words, you went there, you went from Lykes to Isthmian about the first —

A No, sir. I was — I left Lykes Brothers approximately April, I think it was about April 5, 1953.

Q All right. You were a non-member at that time?

A Yes, sir.

Q And then you went from there to Isthmian, is that right?

A No. I worked out of the hall, just jobs; then I went to Isthmian.

Q When did you go to Isthmian?

A About August 1, 1955.

Q At that time you were a member of 1351?

A Yes, sir.

Q All right.

Now, did you work for Rice-Kerr for a while before you went to work for Isthmian?

A Yes, sir.

Q Wasn't that a 40-hour job?

[1158] A That was every day, but I don't think I was guaranteed — I made more than 40 hours.

Q But you had a regular job?

A Yes, sir.

Q And you were a non-member at that time?

A Yes, sir.

Q Now, your job with Rice-Kerr as chief clerk, who is your superior?

A Mr. Frank Dunn.

Q And you, of course, had to do — you have to do what he tells you to do?

A Yes, sir.

Q Who does the hiring of men when needed?

A I do.

Q Will you tell us, please, sir, whenever you need men the procedure you follow?

A I call the hall of Mr. Morrow and ask him who he has available, and he reads the names, and I pick out the men I want.

Q Do you know which men are members and which men are non-members when he reads the names?

A Yes, sir.

* * * *

[1160] Q (By Mr. Crystal) Now, do you have any men working for you on a 40-hour basis?

A Yes, sir. We have three.

Q And any of those three non-members?

A One; Mr. M. M. Stroud, approximately a month.

* * * *

[1161] Q Now, as chief clerk, you have full authority over the checkers, don't you?

A Yes, sir.

* * * *

[1162] Q Do you have clerks?

A We have clerks, yes, sir.

Q You have full authority over them too, don't you?

A Yes, sir.

Q Is there anything to stop you from changing a man from one job to another?

A No, sir.

Q Do you do it very often?

A You mean, if I get you right —

Q If a man comes down to work in a hatch checking one thing, you change him to working somewhere else doing something else.

A Yes, sir. On the three men I have hired, they do everything, such as, you know, load, check, or deliver.

* * * *

[1169]

R. L. LAIRD

a witness called by and on behalf of Respondent Unions, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Crystal) Mr. Laird, are you employed regularly at this time?

A Yes, sir.

Q By whom are you employed?

A Hansen, Tidemann & Dalton.

Q Are you a monthly man?

A Yes, sir.

Q How long have you been employed by them?

A Since the first of October.

Q What year?

A 1956.

Q Were you employed prior to that time as a regular monthly man or hourly man?

A Well, from about 1948 until about 1953 I was regular [1170] on a salary with Texas Transport & Terminal, and in between that time I worked out of the hall.

Q Now, you are a member of 1351?

A No, sir.

* * * *

Q Mr. Laird, what do you do for Tidemann and Dalton now?

MR. EIKEL:

It's Hansen, Tidemann now.

Q (By Mr. Crystal) Whatever it is, what do you do?

A Dock Clerk.

Q As Dock clerk, do you hire then men that are necessary?

[1171] A Yes, sir, when I'm working a ship.

Q Tell us what you do in order to hire these men, what procedure do you follow?

A When I find out the ship is coming or when it's due, I call the business agent and tell him I am going to need how many checkers or whatever I need, and he will tell me as a rule who he has, and I will tell him who I want.

Q In other words, he calls the names off and you select the men you want?

A Yes, sir.

* * * *

[1184]

HAROLD J. BENOFF

a witness called by and on behalf of Respondent Unions, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Crystal) . . .

* * * *

Q And are you a member of 1351 or not?

A I am.

Q When did you become a member of 1351?

A August 1956.

[1185] Q Now, for whom did you work on a monthly basis?

A Texas Transport & Terminal and Texport Stevedores.

Q For what period of time did you work for Texas Transport as a monthly man?

A I worked for Texas Transport as a monthly man since the first of 1956, January 1 of 1956.

Q And are you working there today?

A Yes, sir.

[1186] Q On a salary?

A Yes, sir.

Q Now, who did you work for before that, on an hourly basis?

A I worked on a salary for Texport Stevedore, monthly salary.

Q When did you start that?

A June 1955.

* * * *

[1187] Q Now, tell me what kind of work you do in your present job.

A Dock clerk.

Q And do you hire men?

A Sometimes I do, yes sir.

Q Who is your superior?

A S. D. Gardner.

Q You have to do what he tells you to do, don't you?

A That's right.

Q And when you hire these men, do you hire them through Mr. Morrow.

A Yes, sir, I do.

Q In other words, you phone Mr. Morrow and tell him you need some men?

A Yes, sir.

Q And he reads the names off of a list, and then you select the names of the men you want. Is that what you do?

【1188】 A Yes, sir.

Q That has been your practice for the three years you have been down there?

A Yes, sir.

* * * *

【1193】 TRIAL EXAMINER:

On the record.

Let the record show there has been and off-the-record discussion and counsel have reached a stipulation which they will attempt to dictate, Mr. Whittaker starting it off and Mr. Crystal finishing, I think is their plan of procedure. Go ahead.

MR. WHITTAKER:

That if the following named persons were called as witnesses, they would testify in substance as follows:

W. A. Brooks, J. F. Curry, Q. C. Coles, H. L. Evans, C. B. Gramps, G. J. Lamb, E. L. Powledge, K. O. Rich, F. C. Reinhart, M. J. Schweizer, F. J. Cornelius, S. S. Kutchinsky, P. H. Lower, L. T. Shepherd, A. E. Tripps;

And if they were sworn, they would testify as follows:

That during 1954, 1955, and 1956 insofar as the witnesses' own knowledge, own personal knowledge, he had no problem in getting work out of Local 1351; that with the exception of Field, Vinson, and Linnenberg, he does not recall

anyone presenting a grievance of any kind about not receiving work; and members may or may not have been out of work and wanting work on the occasions that he received work, and that work has steadily increased in the Port of Houston over the years 1954, 1955 [1194] and 1956.

MR. CRYSTAL:

So stipulate.

TRIAL EXAMINER:

You want the stipulation read back?

MR. CRYSTAL:

No. It's all right.

MR. EIKEL:

No objection.

TRIAL EXAMINER:

All of you stipulate?

MR. WHITTAKER:

Yes, sir.

TRIAL EXAMINER:

All right. You have a stipulation.

• • • •

GENERAL COUNSEL'S EXHIBIT No. 4b

Received: Sept. 15, 1955

Galveston, Texas,
Sept. 10, 1955.

Mr. Ralph A. Massey, President
South Atlantic & Gulf Coast District
International Longshoremen's Association (Independent)
Marine Building
Galveston, Texas

CLERKS & CHECKERS
AGREEMENT
LOCALS 1351 & 1665

Dear Sir:

Please be advised that the members of this Association will no longer give further effect to the preferential hiring provisions of the collective bargaining agreement presently in effect with the Locals described above.

Very truly yours,

MASTER STEVEDORES
ASSOCIATION OF TEXAS
(Signed) W. C. EITELBACH
W. C. Eitelbach, President.

cc: I. L. A. Local No. 1351
7524 Ave. N
Houston, Texas

I. L. A. Local No. 1665
Galveston, Texas

Mr. M. L. Cook
Royston & Rayzor
San Jacinto Bldg.
Houston, Texas.

Mr. Clifford W. Potter
Officer in Charge
National Labor Relations Board
6 Federal Land Bank Bldg.
430 Lamar Ave.
Houston, Texas

GENERAL COUNSEL'S EXHIBIT No. 4c

Received: Aug. 16, 1955

HOUSTON MARITIME ASSOCIATION
Cotton Exchange Building

Houston 2, Texas

August 15, 1955

Mr. Clifford W. Potter, Officer in Charge
National Labor Relations Board
6 Federal Land Bank Building
430 Lamar Avenue
Houston 2, Texas

GALVESTON MARITIME ASSOCIATION, INC., et al
CASE NO. 39-CA-482

Dear Sir:

With respect to the subject case, we give you below the names of the members of this Association and the dates and places they have posted copy of NLRB Form 4030:

MEMBER, DATE POSTED, LOCATION

Texas Transport & Terminal Co.

7/25/55 Office in Cotton Exchange Bldg.
General dock office at Long Reach Terminal

Waterman Steamship Corp.

7/22/55 Office in Cotton Exchange Bldg.

7/26/55 Dock office at Long Reach Terminal

Fowler & McVitie, Inc.

7/27/55 Office in Cotton Exchange Bldg.

Long Reach Docks

Hansen, Tidemann & Dalton

7/26/55 410 Cotton Exchange Bldg.

Long Reach Dock No. 6

City Dock No. 13

Bloomfield Steamship Co.

7/27/55 Office in Cotton Exchange Bldg.

(No dock office)

Lykes Bros. Steamship Co.

7/26/55 Long Reach Dock No. 5

Manchester Terminal

City Dock No. 15

Biehl & Company

8/ 1/55 213 Cotton Exchange Bldg.

City Dock No. 3

1402 - 70th Street

William Parr & Co.

7/25/55 Manchester Terminal

Office in Cotton Exchange Bldg.

E. S. Binnings

7/21/55 Manchester Terminal
Long Reach Docks
Office in Cotton Exchange Bldg.

Strachan Shipping Co.

7/20/55 Long Reach Dock No. 5
City Dock No. 9
Adams Terminal, Pasadena, Texas

States Marine Corp.

7/22/55 Long Reach No. 4
Office in Cotton Exchange Bldg.

Isthmian Steamship Co.

7/22/55 City Dock No. 12
1011 Cotton Exchange Bldg.

Thomas Rice & Co.

7/21/55 Office in Cotton Exchange Bldg.
Long Reach Dock No. 4

Garcia Line Corp.

Employ no clerks and checkers

This letter should conclude the matter in so far as this Association is concerned.

Very truly yours,

HOUSTON MARITIME
ASSOCIATION

(Signed) L. W. HOMBURG
L. W. Homburg, President

LWH/p

GENERAL COUNSEL'S EXHIBIT No. 5a
SETTLEMENT AGREEMENT

United States of America
National Labor Relations Board

Case No. 39-CB-90

In the Matter of

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, LOCAL 1665, INDEPENDENT, AND
T. M. BENNETT, PRESIDENT;
SOUTH ATLANTIC & GULF COAST DISTRICT,
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
AND RALPH MASSEY, PRESIDENT, ET AL

The undersigned labor organization (herein called the Union) and the undersigned charging party (herein called the Charging Party), in settlement of the above matter, and subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director), HEREBY AGREE AS FOLLOWS:

POSTING OF NOTICE — Upon approval of this Agreement, the Union will post immediately in conspicuous places in and about its offices, including all places where notices to members are customarily posted, and maintain for a period of at least sixty (60) consecutive days from the date of posting, copies of the Notice to All Members attached hereto and made a part hereof. The Union will submit forthwith signed copies of said Notice to the Regional Director who will forward them to the employer whose employees are involved herein, for posting, the em-

employer willing, in conspicuous places in and about the employer's plant where they shall be maintained for a period of at least sixty (60) consecutive days from the date of posting.

COMPLIANCE WITH NOTICE — The Union will comply with all the terms and provisions of said Notice.

WITHDRAWAL — The Charging Party hereby requests the withdrawal of the charge in this matter, such withdrawal to become effective when the Regional Director is satisfied that the provisions of this Agreement have been carried out.

REFUSAL TO ISSUE COMPLAINT — In the event the Charging Party fails or refuses to become a party to this Agreement, then, if the Regional Director in his discretion believes it will effectuate the policies of the National Labor Relations Act, he shall decline to issue a Complaint herein and this Agreement shall be between the Union and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.19 of the Rules and Regulations of the Board if a request for same is filed within ten (10) days thereof. This Agreement is contingent upon the General Counsel sustaining the Regional Director's action in the event of a review.

PERFORMANCE — Performance by the Union with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or, in the event the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Union of advice

that no review has been requested or that the General Counsel has sustained the Regional Director.

NOTIFICATION OF COMPLIANCE — The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Union has taken to comply herewith. Such notification shall be made within five (5) days, and again after sixty (60) days, from the date of the approval of this Agreement, or, in the event the Charging Party does not enter into this Agreement, after the receipt of advice that no review has been requested or that the General Counsel has sustained the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in the above case.

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, LOCAL 1665, INDEPENDENT,
AND T. M. BENNETT, PRESIDENT;
SOUTH ATLANTIC & GULF COAST DISTRICT,
INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, AND RALPH MASSEY,
PRESIDENT
(Union)

/s/ T. M. BENNETT

/s/ RALPH MASSEY
(Name and Title)

Date executed May 6, 1955

/s/ EDWIN A. ELLIOTT

/s/ CLIFFORD W. POTTER
For the Regional Director,
National Labor Relations Board

/s/ H. H. FIELD
H. H. FIELD
(Charging Party)

(Name and Title)

Recommended
Field Examiner,
National Labor Relations Board

Date Approved June 9, 1955

NOTICE
TO ALL MEMBERS
of INTERNATIONAL LONGSHOREMEN'S AS-
SOCIATION, LOCAL 1665, INDEPENDENT,
AND T. M. BENNETT, PRESIDENT; SOUTH
ATLANTIC & GULF COAST DISTRICT, INTER-
NATIONAL LONGSHOREMEN'S ASSOCIA-
TION, AND RALPH MASSEY, PRESIDENT

PURSUANT TO
A SETTLEMENT AGREEMENT WITH THE
REGIONAL DIRECTOR

of the National Labor Relations Board, and in order to ef-
fectuate the policies of the National Labor Relations Act,
as amended, we hereby notify you that:

WE WILL NOT give further effect to the provisions of the collective bargaining agreement with the Houston Maritime Association, Inc., Galveston Maritime Association, Inc., and Master Stevedores Association of Texas, or any member thereof, which accords preference in employment to members of this union.

WE WILL NOT cause or attempt to cause Houston Maritime Association, Inc., Galveston Maritime Association, Inc., and Master Stevedores Association of Texas, or any member thereof, to discriminate in regard to the hire or tenure of employment of any employees or prospective employees in violation of 8 (a) (3) of the said Act.

WE WILL notify in writing the Houston Maritime Association, Inc., Galveston Maritime Association, Inc., and Master Stevedores Association of Texas that we will not give further effect to the preferential hiring provision of the collective bargaining agreement presently in effect.

WE WILL NOT in any manner restrain or coerce employees or prospective employees of Houston Maritime Association, Inc., Galveston Maritime Association, Inc., and Master Stevedores Association of Texas, or any members thereof, in their exercise of the right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in

concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, LOCAL 1665,
INDEPENDENT, AND T. M. BENNETT,
PRESIDENT;
SOUTH ATLANTIC & GULF COAST
DISTRICT, INTERNATIONAL
LONGSHOREMEN'S ASSOCIATION,
AND RALPH MASSEY, PRESIDENT
(Labor Organization)

/s/ T. M. BENNETT
By /s/ RALPH MASSEY

Dated _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

GENERAL COUNSEL'S EXHIBIT No. 5b

COPY

Received: June 20, 1955

June 15, 1955

Houston Maritime Assoc.
Galveston Maritime Assoc.
Master Stevedores Assoc.

Gentleman;

Pursuant to a settlement agreement with the Regional Director of the National Labor Relations Board, I have been instructed to advise that the Undersigned will not give further effect to the preferential hiring provision of the collective Bargaining agreement presently in effect.

Yours Very Truly,

(Signed) RALPH A. MASSEY
Ralph A. Massey,
President of
South Atlantic & Gulf
Coast District, ILA

RAM/jsc

/s/ R. A. MASSEY
Local No. 1351, ILA IND. President

/s/ T. M. BENNETT
Local No. ILA Ind. President

GENERAL COUNSEL'S EXHIBIT No. 5c

Received: Sept. 23, 1955

STEAMSHIP CLERKS and CHECKERS
I.L.A. Local No. 1351
Affiliated with American Federation of Labor
7524 Avenue N - Phone WO-8118

HOUSTON, TEXAS

National Labor Relations Board
39th Subregional Office

Dear Sirs:

We wish to inform you that all provisions of the settlement agreement in case No. 39-CB-90 have been complied with in full.

The notices were posted June 13, 1955 and remained posted as directed until August 13th, 1955.

Respectfully yours,

(Signed) O. J. HOOPER
Recording Sec.
ILA Ind. Local 1351

GENERAL COUNSEL'S EXHIBIT No. 10A

THIS AGREEMENT, made and entered into by and between HOUSTON-GALVESTON MARITIME ASSOCIATION & MASTER STEVEDORES Parties of the First Part, and the Undersigned Locals of the Clerks and Checkers of the International Longshoremen's Association, Parties of the Second Part, WITNESSETH:

1. SCOPE OF WORK

- (A) The scope of work involved in this contract shall cover all Clerks, Timekeepers, Checkers or Tallymen employed in checking, receiving or delivery of freight, or (Ship Stores when Clerk or Checker is used) from vessel to wharf or wharf to vessel, and such Clerks, Timekeepers, Checkers and Tallymen as are employed in making delivery to and from drays and/or other conveyances, including railroad cars or transport companies.
- (B) The members of the Parties of the First Part shall have the right to employ members of the Party of the Second Part, calling them by name to be used as regular salaried Wharf Clerks, extra Wharf Clerks or Timekeepers as provided in Paragraph 4, Section B and C thereof: It being distinctly understood the employer has the right during the life of this contract to call regular monthly men, extra wharf clerks and timekeepers by name and complete discretion as to the number of regular men to be carried on monthly pay-

roll, varying the number as they see fit with the usual proper notice of fifteen days.

* * * *

2.

Members of the Party of the Second Part shall have preference of all work pertaining to extra Clerking, Time-keeping, Checking and Tallying as defined in Section 1, Paragraph A hereof. The Party of the second part shall reserve the right to rotate work among these Checkers and Tallymen.

* * * *

12. LIFE OF AGREEMENT

This agreement will become effective October 1, 1953, and remain operative until midnight September 30, 1955.

It is mutually agreed that either party may be privileged to open this contract for the negotiations of wages only; however, either party desiring to open the contract for the negotiation of wages shall give a 60 days written notice before September 30, 1954, to the other party, otherwise contract automatically remains unchanged.

President, Local No. 1665

Secretary, Local No. 1665

President, Local 1351

Secretary, Local 1351

SOUTH ATLANTIC & GULF COAST
DISTRICT, I.L.A.

President

Secretary

GALVESTON MARITIME ASSOCIATION, INC.

President

HOUSTON MARITIME ASSOCIATION, INC.

President

MASTER STEVEDORES ASSN. OF TEXAS

President

GENERAL COUNSEL'S EXHIBIT No. 11
GALVESTON MARITIME ASSOCIATION, INC.

Galveston, Texas, April 12, 1955

TO THE MEMBERS:

CLERKS AND CHECKERS AGREEMENT

This is to advise that the Joint Labor Committee has completed an agreement with the Clerks and Checkers for an extension of the present contract to September 30, 1956. There are no changes in the working conditions. . . .

* * * *

Yours very truly,
G. H. Brown, Secy-Treas.

/s/ T. M. BENNETT
President, Local 1665

/s/ WM PARR
Secretary, Local 1665

/s/ R. A. MASSEY
President, Local 1351

/s/ O. J. HOOPER
Secretary, Local 1351

Galveston Maritime Association, Inc.

/s/ J. W. DUNN

Master Stevedores Association of Texas

/s/ WARREN C. EITELBACH

President

Houston Maritime Association, Inc.

/s/ J. H. HOMBURG

President

South Atlantic & Gulf Coast District, I.L.A. (Ind.)

/s/ R. A. MASSEY

President

/s/ J. E. WILLIAMS

Secretary

GENERAL COUNSEL'S EXHIBIT No. 18

OFFICERS OF LOCAL 1351, STEAMSHIP
CLERKS AND CHECKERS, INTERNATIONAL
LONGSHOREMEN'S ASSOCIATION

(December 31, 1955)

	<i>Expiration date of Present Term</i>	<i>Affidavits</i>
President, Ralph A. Massey	12-31-55	1-24-56
Vice President, H. Vestal	12-31-55	1-24-56
Rec.-Secy., O. J. Hooper	12-31-55	1-24-56
Fin.-Secy., J. J. Casey	12-31-55	1-24-56
Bus. Agent, C. B. Morrow	12-31-55	1-24-56
Sgt.-At-Arms, P. F. Koehne	12-31-55	1-24-56
Ex. Board, Harry C. Board	12-31-55	1-24-56
Ex. Board, C. C. Steiner	12-31-55	1-24-56
Ex. Board, G. H. Binford	12-31-55	1-24-56

(January 24, 1956)

President, H. Vestal	1-9-57	2-2-57
Vice President, W. O. Hatcher	1-9-57	2-2-57
Secy-Treas., J. J. Casey	1-9-57	2-2-57
Rec.-Secy., O. J. Hooper	1-9-57	2-2-57
Bus. Agent, C. B. Morrow	1-9-57	2-2-57
Sgt.-At-Arms, P. F. Koehne	1-9-57	2-2-57
Member Ex. Board, T. H. Hutson	1-9-57	2-2-57
Member Ex. Board, C. C. Steiner	1-9-57	2-2-57
Member Ex. Board, U. T. Malanaphy	1-9-57	2-2-57

GENERAL COUNSEL'S EXHIBIT No. 19

MEMBERS I.L.A. 1351

C. H. ANDERSON
 JOHN BREAD
 J. C. BEARD
 G. H. BINFORD
 J. P. BINFORD
 H. C. BOARD
 C. L. BURKS (c)
 R. F. BYRNE, JR.
 J. J. CASEY
 R. C. CASTOLDI
 G. A. CHERRY
 C. L. COLMER
 S. E. CONROY
 J. M. CASTON
 J. CRAVEN
 M. M. CURRIE
 L. W. DAIGLE
 O. D. EDWARDS
 C. L. FLYNN (c)
 S. D. GARDNER, SR.
 H. GLENN
 L. B. HANCOCK, SR.
 L. B. HANCOCK, JR.
 A. N. HARDY
 W. O. HATCHER
 T. J. HOOKS
 O. C. HOOKS (c)
 O. J. HOOPER

T. H. HUTSON
M. B. JAMES, SR.
S. G. JENSEN
E. H. JOHNSON
W. A. KEITHER
D. M. KING
H. K. LOGAN (c)
U. T. MALANOPHY
W. C. MANN
W. K. MERRITT
F. F. MILLER
J. M. MILLS
L. P. MOORE
C. B. MORROW
P. A. MARX
R. H. MORROW (c)
J. E. MORGAN
L. C. NICOLINI
J. W. NOLAN
H. PHILLIPS
E. B. PERKINS
H. F. REITZ
A. H. REID (c)
R. E. SCALF
T. E. STARR
C. C. STEINER
B. A. STOCKTON (c)
E. B. TERRY
W. E. USRY
H. VESTAL
W. W. WAITE
G. F. WILLIAMS
P. F. KOEHNE

O. M. LACEY, SR.
 R. A. MASSEY
 D. McGOVERN
 W. C. REYNOLDS
 A. D. DUKE
 W. E. KAY
 J. Q. SGITCOVICH
 F. TILLER
 H. W. WILKES
 F. V. CRABTREE
 K. K. GOKA
 G. B. ROBERTSON
 G. F. ROBINSON
 R. E. SHILK
 T. P. SEIBERLING
 B. N. STEINHORT
 W. T. GARDNER, Jr.
 T. J. MARTIN
 M. S. SEIBERLING
 C. B. MORROW

C Means checkers only.

Note: (c) For Checkers

NON MEMBERS I.L.A. 1351

T. J. ALLEN
R. C. ARNOLD (c)
H. J. BENOIT
W. A. BROOKS
L. E. BARTHELMESS(c)
ED. BAUER
C. R. CONLEY (c)
F. G. CORNELIUS
W. B. CASEY
G. F. CURRY (c)
E. J. CHONCELLOR (c)
A. L. CRAIG (c)
Q. C. COLE (c)
M. E. CASEY, JR.
P. C. CHAPMAN (c)
T. W. CONROY
H. L. EVANS
M. R. EVETTS* (c)
H. H. FIELDS* (c)
J. F. FOWLER (c)
C. B. GRAMP
S. D. GARDNER, JR.
J. B. HOLLAND (c)
J. H. HUTSON (c)
J. S. HODGES (c)
R. H. HILL* (c)
W. H. JONES
S. KUTCHINSKY (c)
P. H. LOWER (c)
G. J. LAMB
R. A. LAIRD

R. L. LAIRD
F. A. LINNENBERG (c)
O. M. LACY, JR. (c)
V. V. MYERS (c)
J. N. MARTIN
N. H. MERRITT (c)
G. C. MYATT (c)
B. F. MULLINS* (c)
D. McINTOSH* (c)
J. E. NELSON
T. M. OSBORNE (c)
E. F. PAWLEDGE
S. W. ROBINETTE (c)
K. O. RICH
F. C. RINEHART (c)
J. A. RAILEY* (c)
J. RITMANICH
M. J. SCHREIBER
J. M. SERVER
L. T. SHEPHERD (c)
J. C. SMITH (c)
J. A. SMITH (c)
V. J. SEIDEL (c)
G. R. SCOTT* (c)
E. J. SCOTT (c)
A. E. TRIPP (c)
H. A. TRAINO (c)
B. A. VESTOL
G. R. VINSON (c)
C. S. WHATLEY
E. L. WHATLEY
O. O. WRIGHT (c)
G. A. WARNER (c)

A. B. WISE (c)
 J. C. WORTHINGTON (c)
 M. R. LAWSON (c)
 G. L. MERRITT (c)
 F. J. MICHEL (c)
 K. MOORE
 J. H. ANDREWS* (c)
 C. J. ANDERSON* (c)
 J. B. BOLIG* (c)
 W. W. CROUCHER* (c)
 J. B. DALY* (c)
 J. F. HOUSE* (c)
 A. P. KENNADA* (c)
 L. R. LACY* (c)
 M. J. SCHWEIZER* (c)
 W. D. SCRUGGS* (c)
 W. F. WHISNANT* (c)
 P. G. WILLIAMS* (c)
 G. TULLAR* (c)

Note: (c) For Checker

*Men Who Worked During 1955 But Are
 No Longer Available

MEMBERS OF OTHER I.L.A. LOCALS

O. D. MAY (c)	1330
S. M. KEE (c)	1273
E. A. CULBERTSON (c)	1273
C. WESBROOK (c)	1330
J. D. PALMER (c)	1273
R. A. CRISPI (c)	1330
C. F. COOK (c)	1330
W. A. JOHNSON (c)	1330
A. B. LEMTSCHKE (c)	1330
A. L. NURSE (c)	1330
J. D. PALMER (c)	1273
D. B. ROGERS (c)	1273
J. L. TEMPLE (c)	1273
C. W. WORD (c)	1330
D. R. ALLEN (c)	1273
J. R. BIGGERS (c)	1273

Note: (c) For Checker

320

GENERAL COUNSEL'S EXHIBIT No. 21



Exhibit 21

(Specimen pages only, to show format. Original Exhibit is being lodged with the Clerk of the Court.)

✓ Currie ✓
Field ✓
Morgan ✓
Martin ✓
Bryant ✓
Kerr ✓
Chewy ✓
Stockton ✓
Hicks ✓
Burke ✓

Spinnenberg ✓
Field. ✓
K. Moore ✓
Myatt ✓
Conroy ✓
Curing ✓
Evette ✓
Reich ✓
Worthington ✓
Ruehert ✓
McIntosh ✓
Meyer ✓
Arnold ✓
Crosby ✓
Scott ✓
Smith ✓
Vinson ✓
Wise ✓
Kurt ✓
Lynn ✓
Cosey ✓
Hodges ✓
Asbome ✓
Robenette ✓
Monceclor ✓
Werner ✓
Shep ✓
Schreiber ✓
Nelson ✓
Holland ✓
Bauer ✓
Gump ✓
Allen ✓
Kavir ✓

7-25-55

L.R. 5 ✓ 1 T.K. 7am Cadery X Lau. S. Co.
L.R. 5 ✓ 1 checker 8am Moore X Teypouts
City 12 ✓ 3 checkers 8am. Lithuanian.

City 12 ✓ 1 Burke X Reid X Bauer X Lithuanian.
City 12 ✓ 1 T.K. 8am Quinipex A.H. S. Co.
City 2 ✓ 1 checker 8am Jenkins X Lau. S. C. Co.
L.R. 5 ✓ 2 checkers 8am. Lypkes.

J.C. Smith X Rich X
L.R. 2 ✓ 1 T.K. 8am King X Canadian Gulf Line.
L.R. 5 ✓ 1 checker 8am Katorinsky X Lypkes.

7-26-55

City 12 ✓ 3 checkers 8am Port. Comm.
Vinson X Linenberg X Shepherd X
City 12 ✓ 3 checkers 8am Lithuanian S. Co.

Wise X Curran X Reid X
Newmont 1 T.K. 7am Cyren X Lau. S. Co.
L.R. 3 ✓ 1 T.K. 8am Cherry X Teypouts.
L.R. 3 ✓ 5 checkers 8am Teypouts.

Morgan X Schraiber X Rinehart X Lacey X Osborne X
L.R. 8 ✓ 1 checker 8am Warner X Biehl X Co.
L.R. 4 ✓ 1 T.K. 8am Byrne X Suderman S. Co.
L.R. 6 ✓ 1 T.K. 10am Gramp X Teypouts.
L.R. 6 ✓ 4 checkers 10am Teypouts.

Hodges X Scott X Myers X Robinette X
L.R. 5 ✓ 1 checker 8am X Moore X Lypkes.
City 9 ✓ 1 checker 8am Arnold X Port. Comm.
L.R. 5 ✓ 1 checker 8am Myatt X Lypkes.
Spruette ✓ 1 T.K. 7pm Gramp X Lau. S. Co.
7-27-55

City 14 ✓ 1 T.K. 7am Byrne X Teypouts.
L.R. 5 ✓ 1 checker 7am Hooks X Lypkes.
L.R. 5 ✓ 1 checker 8am Stockton X Lypkes.
L.R. 6 ✓ 1 checker 8am Warner X Benning.
City 18 ✓ 1 checker 8am Allen X Lithuanian.
City 3 ✓ 1 checker 8am Robinette X Port Comm.
2

BEST COPY AVAILABLE

from the original bound volume

GENERAL COUNSEL'S EXHIBIT No. 27

PROPOSED CHANGES IN AGREEMENT MADE AND
ENTERED INTO BY AND BETWEEN HOUSTON-GAL-
VESTON MARITIME ASSOCIATION AND MASTER
STEVEDORES ASSOCIATION OF TEXAS AND
CHECKERS LOCALS I.L.A. No. 1665 and No. 1351:

* * * *

Delete Section 2.

* * * *

The Operators agree that they will use their influence to
try and get better facilities for the clerks to work in on the
docks.

Feb. 14, 1957

GENERAL COUNSEL'S EXHIBIT No. 28 .

RECORD FOR I.L.A. LOCAL 1351
NOT AN APPLICATION FOR MEMBERSHIP

PLEASE PRINT

Date _____

Full name _____ Social Security No. _____

Address _____ Port Security Card No. _____

* * * *

Are you presently employed? _____ Where? _____

Who suggested that you seek employment here? _____

This is to certify that I agree to work thru, and do hereby authorize and designate the I.L.A. Local Union 1351 as the bargaining agent for me, and I further agree to pay I.L.A. Local 1351 three percent of my net wages as compensation for services rendered to by this local which I agree is a reasonable charge. I hereby assign and transfer to Local Union No. 1351 said percentage of my wages.

I hereby certify that the above answers are true and correct.

Signed _____

GENERAL COUNSEL'S EXHIBIT No. 34 A

		REPAID	
267	131	620	17615
H. Anderson	460	11335	
P. Binford	500	14190	
H. Binford	520	187	
John Beard	750	15033	
C. Beard	1145	17879	
C. Beard	958	23449	
C. Burk	420	7776	
C. Byrne	324	17223	
C. Cass	970	15171	
C. Crabtree	262	3396	
C. Caldwell	223	19735	
C. Colmer	238	7929	
C. Conroy	420	21607	
C. Costen	975	10451	
C. Craven	435	16715	
C. Currie	44	5579	
C. Duke	1349	8235	
C. Daigle	539	540	
C. Edwards	31	10735	
C. Elton	505	3158	
C. Groka	286	17372	
C. Gardner	440	1925	
C. Gardner	485	14583	
C. Glenn	225	4736	
C. Hancock	445	11720	
C. Hancock	576	20375	
C. Hardy	572	11958	
C. Hatcher	816	9568	
C. Hooks	445	19915	
C. Hooker	576	9403	
C. Hooper	572	8800	
C. Hutson	816	16874	
C. James	445	17007	
C. Jensen	445	10830	
C. Johnson	445		
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	590	10971
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Schrieber
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Smith
Thompson

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✓ JWA JOHNSON
 ✓ M EVETTE
 ✓ JZ MCINTOSH
 ✓ JAL PALMER
 ✓ JAL MURSE
 ✓ JAL MCNOLD
 ✓ JAL ROGERS
 ✓ JAL HOUSE
 ✓ JAL SPANROY JR
 ✓ JAL LAGY JR
 ✓ JAL TRAINO
 ✓ JAL SCOTT
 ✓ JAL RITMANICH
 ✓ JAL LEATYCHNE
 ✓ JAL SCARUGS

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NATIONAL LABOR RELATIONS BOARD

Case No. OFFICIAL EXHIBIT NO.

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See Table in Book

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17521

LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, AND C. B. MORROW, B.A. OF LOCAL 1351, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 17631

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

v.

HOUSTON MARITIME ASSOCIATION, INC., MASTER STEVEDORES ASSOCIATION OF TEXAS AND THE INDIVIDUAL RESPONDENT COMPANIES LISTED ON APPENDIX A HEREIN, WHO ARE MEMBERS OF THOSE ASSOCIATIONS, RESPONDENTS

ON PETITION TO REVIEW AND PETITION TO ENFORCE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

United States Court of Appeals

for the District of Columbia Circuit

ARNOLD ORDMAN,

General Counsel,

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National Labor Relations Board.

FILED SEP 14 1963

Nat'l. L. Paulson
CLERK

See Table in Book

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STATEMENT OF QUESTIONS PRESENTED

The questions presented are set forth on page 364 of Volume I of the Joint Appendix and on the front page of Union petitioners' brief.

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17521

LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, AND C. B. MORROW, B.A. OF LOCAL 1351, PETITIONERS

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v.

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*ON PETITION TO REVIEW AND PETITION TO ENFORCE AN ORDER
OF THE NATIONAL LABOR RELATIONS BOARD*

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

STATEMENT OF THE CASE

No. 17521 is before the Court on the petition of Local 1351, Steamship Clerks and Checkers, International Longshoremen's Association, AFL-CIO, International Longshoremen's Association, AFL-CIO, and C. B. Morrow, Business Agent of Local 1351, hereafter collectively referred to as "the Union," pur-

suant to Section 10 (e) and (f) of the National Labor Relations Act, (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151 *et seq.*), to review an order of the Board (J.A. I 341-362)¹ issued on December 29, 1958, as amended October 22, 1962 (J.A. I 367-389). In its answer to the petition for review, the Board requested enforcement of its order. No. 17631 is before the Court on the Board's petition for enforcement of the same order against Houston Maritime Association, Inc., Master Stevedores Association of Texas and the individual member Companies listed on Appendix A of the Board's order herein, who are members of those Associations.

I. The Board's findings of fact

Briefly, the Board found that the Employers and Union violated the Act by maintaining an exclusive hiring arrangement under which preference in employment was given to members of Local 1351 and then to members of sister locals and under which applicants for employment were required as a condition of employment to designate Local 1351 as their bargaining agent and to agree to pay it a percentage of their wages, with nonmembers in fact paying more than members. The Board further concluded that job applicants Vinson and Linnenberg were denied employment because they were not members of Local 1351 and because they had filed unfair labor practice charges with the Board.

The Board's conclusions are based upon the following findings of fact:

A. The preferential hiring system

1. Originally both the collective bargaining contract and the Union rules gave job preference to members of Local 1351

Houston Maritime and Master Stevedores are trade associations whose member steamship and stevedoring companies employ clerks, checkers, and timekeepers (herein referred to generally as clerks), represented by Local 1351 (J.A. I 258-

¹ References designated "J.A. I" are to Volume I of the Joint Appendix; "J.A. II" references are to Volume II. Occasional references to the type-written transcript of testimony are designated "Tr." References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

261; J.A. II 126, 181, 203, 167-168). The Local's working rules prohibit its members, under pain of fine or suspension, from seeking employment directly or from leaving their jobs to accept work at another dock (J.A. I 330 n. 3,261; J.A. II 139, 204). Furthermore, when the companies need clerks they do not hire them directly but call the business agent of Local 1351 (J.A. I 329, 330, 258; J.A. II 61-62, 66, 74, 83, 89-90, 97, 101, 103, 107, 108, 115, 116, 122, 127, 130-131, 146, 229, 233, 260-262). When a man applies for work at the dock, he is told to "go to the Union and get his name on the board," and that he will be called when needed (Tr. 418-419, 566, 594).

The constitution and rules of the International, with which Local 1351 is affiliated, provide that (J.A. I 331, 262; J.A. II 140, 204):

Where two or more Locals exist in the same Port and one Local has more work than its membership can take care of, said Local shall give preference to members of the other Locals in the performance of such extra work.

The Local's constitution and working rules, in turn, make it the duty of the business agent to "see" that the members abide by the union rules (J.A. I 331, 261; J.A. II 138, 204).

Section 2 of the collective bargaining agreement entered into between the employers and Local 1351 in October, 1953,² provides that the Local would have "preference of all work pertaining to extra clerking, timekeeping, checking, and tallying" (J.A. I 255, 256; J.A. II 308). As a result, the Union kept separate lists of members and nonmembers available for work (J.A. I 330, 259; J.A. II 42). The list of members was kept on a blackboard in the private office of the business agent (J.A. I 330; J.A. II 42-43). The names of nonmember job applicants were written on a blackboard in the main room of the union hall (J.A. I 330; J.A. II 42).

In late 1954 and early 1955 charges were filed with the Board alleging generally that the hiring arrangement between the parties discriminated against nonmembers of Local 1351 (J.A. I 245-249). In the summer of 1955, the Board's regional di-

² This contract, which was originally to expire in September, 1955, was thereafter extended to September, 1956 (J.A. I 255; J.A. II 307-311).

rector approved a settlement agreement intended to cover all of the matters alleged in the charges (J.A. I 249-252; J.A. II 74, 77). Pursuant thereto, the parties agreed that Section 2 of the contract granting employment preference to members of Local 1351 (*supra*, p. 3), would be inoperative (J.A. I 249-251; J.A. II 72, 78, 80, 300-304). The agreement states on its face that the decision to take no further action is "contingent upon compliance" with the terms of the agreement (J.A. I 74-77; J.A. II 301). The Union, however, continued to keep separate lists of members and nonmembers but, at about the time of the settlement agreement, began keeping both lists in the office of the business agent where they were not available for inspection (J.A. I 330 n. 4; J.A. II 46, 36, 282-283, 320).

2. The hiring system continues unchanged

As stated *supra*, p. 3, the Companies always call Local 1351 when they need men. Beginning in early 1956,—that is, after the settlement agreement—all applicants for employment through the Local have been required to sign a form designating the Local as their bargaining representative and binding them to pay it a percentage of their wages "as compensation for services rendered" (J.A. I 333, 263; J.A. II 323, 87-88).³ In fact, the employee in terms "assign[s] and transfer[s]" to the Local the percentage of his wages (J.A. II 323).

It is also undisputed that the settlement agreement resulted in no change in the Companies' method of hiring clerks (J.A. I 258, 329-330, 330 n. 4; J.A. II 66, 86, 97-98, 108, 116, 123, 133, 146, 229-230, 261-262, 281). When a company needs men, its chief clerk calls the business agent of Local 1351 (*ibid.*). The chief clerks, admittedly, are supervisory employees within the meaning of the Act (J.A. I 330; J.A. II 24, 63-64, 74, 79, 91-92, 98, 103, 104, 107-108, 113-114, 121-122, 130, 229, 235, 291). All or most of them are long-term union members and many have served as officers of the Local and on its committees, including the contract negotiating, grievance, and membership committees (J.A. I 330, 259; J.A. II 25-34, 80-81, 227, 258-259, 261, 285-286). Like the rank and file employees, they are re-

³ Between 1954 and 1956, job applicants were required to agree orally to pay the percentage (J.A. I 263, 333 n. 9; J.A. II 37).

quired to designate Local 1351 as their bargaining representative and to pay the same percentage paid by the rank and file employees (J.A. I 330-331, 264; J.A. II 80, 94, 105, 106, 112, 119-120, 125, 129, 227).

A few of the Employers merely request the business agent to send a certain number of men and leave it to the business agent to select those to be sent out (J.A. I 259; J.A. II 41, 115, 150). Usually, however, when a chief clerk calls, the business agent reads him the names of the men available and the clerk selects the employees to be hired (J.A. I 258-259, 330; J.A. II 39-41). Apparently, the business agent does not indicate which of the men are members (J.A. I 259, 330; J.A. II 40-41, 115). However, as noted *supra*, pp. 3, 4, the chief clerks are active union members and the constitution of the International requires that the locals give job preference to Union members. The chief clerks frankly admitted at the hearing that they know who is and who is not a member of the Local (J.A. I 259, 330; J.A. II 67, 287). For example, Herrick Vestal, who had previously served as chief clerk for one of the companies but at the time of the hearing was president of the Local, was asked if he inquired of the business agent as to which men were members and which were not. He replied, "No, usually when I called I knew which men belonged and which did not belong" (J.A. II 68).

B. The hiring system in fact discriminated against nonmembers

1. Union members generally hold the better jobs and earn more money

In addition to their chief clerks, many if not all of the Companies employ one or more full time or regular clerks, some on a monthly basis, others by the week (J.A. I 332 n. 7; B.A. 19-20, 57, 59, 114, 130). Practically all of these jobs are held by members of Local 1351 (J.A. I 332 n. 7; J.A. II 57, 100-101).⁴ As noted, *supra*, p. 3, the chief clerks call the Union when they

⁴ Clause 1 (B) of the collective bargaining contract empowers the employers to hire members of the Local as regular salaried wharf clerks and to call for regular monthly men by name (J.A. II 307). Although the Local had 80 members in 1955 and 106 members in 1956, the business agent's daily lists of members available for extra work over a period of several months, show only 18 different members seeking extra work (J.A. II 263-272, 320-321, G.C. Ex. 21).

need "extra" men. When a man is selected, the business agent places a check mark beside his name on the list of those available for work (J.A. II 263-272). An examination of the daily lists between July 25 and December 20, 1955, discloses that only rarely does a member fail to be selected, whereas it is equally rare that all or even most of the nonmembers are selected (J.A. II 263-272, 320-321, G.C. Ex. 21, J.A. II 178-179, 324-329).⁵ In addition, Local 1351's records of the percentage of earnings paid to the Local by each member and each nonmember between April and November, 1955, disclose that the 18 members who regularly sought extra work through the hall paid a total of \$2412.49 in percentages or an average of \$134.02 per man (J.A. I 332 n. 7; J.A. II 263-271, 320-321, G.C. Ex. 21, J.A. II 178-179, 324-329). The 45 nonmembers, on the other hand, paid percentages totalling \$3,785.13 or an average of \$84.11 per man (*ibid.*).⁶ Since the percentages are based on earnings, it is evident that during the 6-month period the members seeking extra work earned approximately 60% more than nonmembers.

2. Nonmembers Vinson and Linnenberg repeatedly fail to obtain employment

Two of the three employees filing the original charges alleging discrimination against nonmembers (see p. 3, *supra*) were Vinson and Linnenberg (J.A. I 245-248). Both are experienced nonunion or "permit men" who started working out of the Local's hiring hall in 1946 (J.A. I 270, 272; J.A. II 201, 236, 251, 221). Both before and after the settlement agreement, each regularly sought employment at the hall. However, beginning a few months after the settlement agreement (*supra*, p. 3),

⁵ Occasionally, nonmembers are sent out even though some members are available for work. One possible explanation is that the Companies' requests are, for example, for clerks and the members seeking work are timekeepers or checkers who are not qualified "clerks" (J.A. II 23).

⁶ As noted, *supra*, pp. 4-5, the Local collects a percentage of the wages earned from both members and nonmembers. During the above period both paid the same percentage, which the Local later refunded (J.A. I 284-285; J.A. II 53, 117, 274, 283-284). The amount of refund received by each member and each nonmember is set forth in Appendix A, *infra*, p. 36.

they were repeatedly passed over for employment (J.A. I 270, 273; J.A. II 213-221, 225, 237, 240). Not only were members sent out first but Vinson and Linnenberg were not sent out when no members of Local 1351 were available. Instead, Local 1351's Business Agent, Morrow, called the hiring halls of two sister locals in Houston, Locals 1273 and 1330, the so-called Deep Sea and Carloaders locals, and referred to them Company requests for employees (J.A. I 331-332, 270-271; J.A. II 250-251, 49-50). Shortly thereafter, on October 6, 1955, Vinson, acting on behalf of himself and Linnenberg, filed new charges alleging discrimination against nonmembers (J.A. I 271, 252-253).

Two days later, on October 8th, and again on the 9th, someone who refused to identify himself telephoned Vinson at home and warned him to stay away from the Local as he "might get hurt" (J.A. I 271; J.A. II 241-243). At about the same time an unidentified person telephoned Linnenberg at home, telling him "You better stay away from Local 1351's hall, if you know what is good for you" (J.A. I 271 n. 9; J.A. II 211-212). On October 10, Business Agent Morrow phoned to offer Vinson a job as timekeeper and Vinson protested that he never did such work (J.A. I 276; J.A. II 239). Morrow accused Vinson of trying to pick his job, then switched over to charge that Vinson had tried to bribe one Dave McGovern, a charge which Vinson denied. Finally, when Vinson complained that he had received no work between September 3 and September 28, Morrow, adding profanity, voiced substantially the same threat which Vinson and Linnenberg had received from the unknown telephone caller. Morrow wanted Vinson "to understand" that if he kept coming to the Local's hiring hall "somebody is going to knock you in the head and beat you up" (J.A. I 271; J.A. II 239-241). Vinson replied that he had been told by the National Labor Relations Board that it was "all right to go to the hall," to which Morrow bluntly retorted, "I want you and Linnenberg to understand that you are not welcome out here" (*ibid.*).

Vinson, disregarding the threats and Morrow's open opposition to his coming to the hall, continued to go to the hall in search of work. Twice in November some one tampered with his car while it was parked nearby (J.A. I 271; J.A. II 243-245). Vinson then parked it where he could watch it through the venetian blinds on the hall's entrance door (J.A. I 271; J.A. II 245-246). The blinds are usually kept open but on December 2, Morrow without explanation, walked over to the blinds and closed them, thereby preventing Vinson from seeing his car (J.A. I 271; J.A. II 246). Vinson got his last job referral on November 10, 1955 (J.A. I 270; J.A. II 236-237, 250). From January 1956 on, Vinson went to the hall 3 or 4 times a week until July 1, 1956 (J.A. I 270; J.A. II 249, 255).

In the meantime, on May 6, 1956, Morrow telephoned Vinson and told him that he wanted to talk to him but that he did not want Vinson "to tell the NLRB what he wanted to talk" about (J.A. I 272; J.A. II 247-248). Vinson replied that he and Linnenberg had taken the case to the Board and that "whatever happened we would have to tell the NLRB" (*ibid.*) To this, Morrow replied that Linnenberg was out of the case and had nothing to do with it and had not been down to the hall that year (*ibid.*). He added that if Vinson had not "brought the case up" he would have been at work "like Wright and some of the others" (*ibid.*). Morrow also reminded Vinson of "what Wright is making," adding "don't tell the NLRB what I said" (*ibid.*). Wright, to whom Morrow referred, was a nonunion checker who was 68 years old in 1955 (J.A. I 272; J.A. II 199-200). He earned about \$4000 both in 1954 and 1955 and in 1956 his earnings rose to \$4900 (J.A. I 272; J.A. II 200). In contrast, Vinson, who is two years younger than Wright, earned about \$3500 in 1953. In 1954 his earnings fell off by about \$1000; in 1955 his earnings further fell off \$1500 and in 1956 the hiring hall gave him no work at all (J.A. I 272; J.A. II 254-255).

Linnenberg, 68 years old in October 1955, receives a pension and social security benefit payments (J.A. I 273; J.A. II 203-204, 212). He usually withdraws from the labor market when his earnings approximate the maximum permitted without

forfeiture of social security payments (J.A. I 273; J.A. II 206).⁷ In 1955, however, Linnenberg ended the year almost \$300 short of the maximum he could earn without forfeiture of social security benefit payments (J.A. I 221; J.A. II 213-220). After being away since September 1954, Linnenberg began regularly reporting at the hiring hall on May 1, 1955 and work was assigned him occasionally (J.A. I 273; J.A. II 213-220, G.C. Ex. 21). However, toward the latter part of the year he waited in the union hall for lengthy periods without getting a job referral (J.A. I 273; J.A. II 219-221; G.C. Ex. 21). As previously noted, there were occasions when Morrow left him sitting in the hall while he referred jobs to men at sister locals (*supra*, p. 7). In contrast, Linnenberg testified that it rarely happened that union applicants had to go without work for more than a day and his testimony is fully corroborated by the Local's record of men seeking work and men referred for the period from September 25, 1955 to December 20, 1955 (J.A. II 221, G.C. 21).⁸ Feeling that he had not been getting his fair share of the available work he stopped calling at the Local's hiring hall in late 1955 (J.A. I 273; J.A. II 225-226).

⁷ According to S. D. Gardner, chief clerk for respondent Texas Transport & Terminal Co. Inc., during 1952, 1953 and in 1954 until Linnenberg elected to stop working, Linnenberg had regularly worked a 40 hour week with that company. As Gardner put it, while Linnenberg did "strictly dock jobs" and could not go down into ships' holds, the Company never refused to hire him. Gardner added, "He's worked for us a lot." (J.A. II 135-136). Similarly, Chief Clerk Steiner of Strachan Shipping Company testified that in 1954 and 1955 he ordered Linnenberg by name to be referred to his company (J.A. II 91, 99).

⁸ The Local's record of job applicants and referral over the periods from July 25, 1955 to December 20, 1955 (G.C. Ex. 21) shows that although both Linnenberg and Vinson were duly listed as seeking employment, they were not given jobs during the following periods in that year:

Vinson:

Aug. 2-9
19-22
Sept. 6-9
14-19
23-Oct. 5

Linnenberg:

Aug. 2-9
19-22
Sept. 6-9
14-19
27-29
30-Oct. 2
Oct. 8-14
19-Nov. 9
Nov. 14-Dec. 20

C. The requirement that job applicants designate the local as their bargaining representative and pay it a percentage of their wages

As set forth *supra*, p. 4, applicants for employment through Local 1351 are required to sign a form designating it as their bargaining representative and binding them to pay it a percentage of their wages for "services rendered." In addition, members pay \$1 a month dues and "assessments" (J.A. I 268; J.A. II 189). The record shows, however, that assessments are rarely levied (J.A. II 195-196, 181-196). Prior to the settlement agreement, the percentage of their wages paid by members was 2%, that paid by nonmembers was 5% (J.A. I 264, 252; J.A. II 14, 52). For a time after the settlement agreement, both groups paid 5%; later both paid 3% (J.A. I 264; J.A. II 14, 252-253, 272-274, 283). The Local admittedly commingles all of its receipts—that is, the percentages paid by nonmembers go into its general funds as "dues" (J.A. I 264; J.A. II 189, 190).

Employees are paid by checks which are distributed at the union hall (J.A. I 333, 264; J.A. II 50-52, 105, 123, 132). Prior to July, 1955, each employee received one check; he then paid the percentage in cash when he received his pay check from the business agent (J.A. I 333 n. 10; J.A. II 53). In July, 1955—that is, at about the time of the settlement agreement—the Companies who are members of Master Stevedores began to prepare two checks. One is in the amount of the percentage, the other is for the balance of the employee's wages (J.A. I 333, 264; J.A. II 137-144, 93-94). The business agent gives the employee his wage check after the latter endorses the percentage check over to the Local (J.A. I 333, 265; J.A. II 54-55, 139-142).

As set forth above, since April 1955, members and nonmembers have paid the same percentage, with members paying an additional \$1 a month dues. Members, however, receive twice as much insurance as do nonmembers and their families receive death benefits (J.A. I 268 n.; J.A. II 187). Furthermore, the cost of operating the Local comes from its general funds, including the percentage payments of nonmembers (J.A. I 269;

J.A. II 174-177, 181-197).^{*} In addition, at about the time the Local refunded the percentages in November 1955, each of the stockholders of a corporation named "Avenue N" received a check for \$100 (J.A. I 265; J.A. II 117, 56, 198, 159-160, 164-165, 172). All were members of Local 1351 and this was the first money they had ever received from the corporation (J.A. I 265; J.A. II 159-160, 172, 199). Avenue N's only property is the building which houses the hiring hall and the Local's offices and its only income is the \$60 a month rent it receives from the Local (J.A. I 266; J.A. II 158-159, 165-166).

All of Avenue N's original incorporators were officials of Local 1351 and its officers have always been the current or past officers of the Local (J.A. I 265; J.A. II 55-56, 159-161). Ralph Massey, president of Avenue N, and president of the

^{*} Membership in the Local varied from 80 to 108. As stated, dues were \$1 per month and there were few, if any, assessments.

Maximum possible dues receipts in 1956..... \$1,272.00
Examples of 1956 expenditures for nonhiring hall purposes (G.C.

Ex. 33 f-aa) :

Door prizes to stimulate attendance at meetings.....	\$120.00
Ballots for election of officers.....	10.00
Vestal—Traveling expense for investigating grievance.....	50.00
The International:	
—Per Capita Tax.....	829.30
—Special assessment.....	212.00
New Members tax.....	140.00
South Atlantic & Gulf Coast Dist., ILA:	
—per Capita tax.....	159.00
—special assessment.....	108.00
Morrow and Vestal—Traveling expenses, Brownville, Texas, Convention.....	500.00
Morrow, Vestal, and Board—Traveling expense for Contract:	
Committee meetings:	
—Mobile, Ala.....	738.00
—Washington, D.C.....	942.00
—New York, City.....	1,024.90
—Galveston, Tex.....	880.90
—New Orleans, La.....	270.00
Picket signs.....	25.00
Member's death benefit.....	200.00
Copies of ILA Constitution.....	30.00
Total.....	\$8,236.70

South Atlantic and Gulf Coast District of the International and who, at the time of the payment was president of the Local, first testified that he did not know where the corporation got the money it paid over to the stockholders but thought it was an advance from Local 1351 on rent (J.A. I 266; J.A. II 158-159, 165). He later testified that, upon investigation he found that the Local had advanced Avenue N \$7,500 to be applied on rent "at some future date" (J.A. I 266; J.A. II 170). However, according to John J. Casey, financial secretary of Local 1351 and of Avenue N, the \$7,500 was a loan from the Local (J.A. I 266-267; J.A. II 173).¹⁰ There is no written evidence of any such transaction and no evidence of any plan or arrangement by Avenue N to repay the alleged loan (J.A. I 267; J.A. II 197, 275-276, 170).

II. The Board's conclusions of law

- ① On the basis of the foregoing facts the Board found that the Associations and their member Companies violated Section 8(a) (3) and (1) of the Act by being parties to an exclusive hiring arrangement with Local 1351 which gave preference in employment to members of Local 1351 and sister locals and which required job applicants to designate Local 1351 as their bargaining representative and to pay it a percentage of their wages, with nonmembers in fact paying more than members (J.A. I 329-331, 333, 336). The Board further found that
- ② by engaging in such conduct and by preparing two checks which facilitated the Local's unlawful collection of the percentages from nonmembers, the Employers gave assistance and support to Local 1351 in violation of Section 8(a)(2) of the Act, and interfered with, restrained, and coerced their employees in the exercise of their rights under the Act, in violation of Section 8(a)(1) of the Act (J.A. I 333, 336, 370).
- ③ The Board also found that Local 1351 and the International, by maintaining and operating the hiring arrangement in the manner set forth above, caused and attempted to cause the

¹⁰ When asked who currently owned the Avenue N stock, Casey first replied, "The local, I imagine." A moment later he changed his answer to, "I mean the members of the local. Let's say it that way" (Tr. 728).

employers to discriminate against employees thereby violating Section 8(b)(2) and (1)(A) of the Act (J.A. I 336, 370).

Finally, the Board found that the Local and Business Agent Morrow further violated Section 8(b) (2) and (1)(A) by causing the employers to discriminate against job applicant Linnenberg because he was not a member of Local 1351 and had filed unfair labor practice charges and that the Local, together with the International, caused the Employers to discriminate against job applicant Vinson for the same reasons (J.A. I 336-337, 370-371). The Associations, the Board also found, violated Section 8(a) (1), (3) and (4) of the Act with respect to Linnenberg and, together with the member Companies, with respect to Vinson by reason of being parties to the unlawful hiring agreement which made the discrimination possible (*Ibid.*).¹¹

III. The Board's order

The Board's order requires both the Companies and the Union to cease and desist from the unfair labor practices found and from in any other manner restraining or coercing employees in the exercise of the rights guaranteed them by the Act (J.A. I 375-381). Affirmatively, the order requires both the Companies and the Union with the exception of Business Agent Morrow, to make whole job applicants Vinson and Linnenberg for any loss of pay they may have suffered because of the discrimination against them and to reimburse all present and former nonmember employees who unlawfully have been required

¹¹ In its original decision the Board held that the exclusive hiring arrangement was also illegal because it failed to include adequate safeguards set out in the *Mountain Pacific* case, 119 NLRB 883 (J.A. I 334-335). Following the Supreme Court's decision in *Local 357, International Brotherhood of Teamsters v. N.L.R.B.*, 365 U.S. 667, rejecting the *Mountain Pacific* doctrine, the Board reversed its holding in this respect (J.A. I 369-370).

A finding of violation by the International and the members companies with respect to Linnenberg is barred by Section 10(b) of the Act, and the Board's order with respect to Linnenberg does not apply to them (J.A. I 337, 376, 379). However, as the Board noted, that section does not bar a finding of the other unfair labor practice violations by the International and the member Companies, since the unlawful hiring arrangement and practices continued in effect within the statutory 6 months period (J.A. I 337, n. 6).

to pay a percentage of their wages to Local 1351 (J.A. I 381-382).¹²

SUMMARY OF ARGUMENT

1. Before the Union will refer a nonmember job applicant to an employer, it unlawfully requires him to designate Local 1351 as his bargaining representative and assign it a percentage of his wages. Since the Companies hire exclusively through the Union, the payment of percentages and the designation of the Union are made conditions of employment. Moreover, the nonmembers make larger payments for smaller benefits. Thus, until unfair labor practice charges were filed in 1954 and early 1955, the Union charged nonmembers 5% of their wages and members only 2%, while offering members death benefits and double the life insurance afforded nonmembers. After the charges were filed, the Union required equal percentage payments from members and nonmembers, but reimbursed members under the guise of declaring a dividend to stockholders in the Avenue N Corporation. In addition, the charges are not geared to the costs of the hiring hall; rather the percentages exacted from nonmembers are placed in the Union's general fund as "dues" and are used for purely Union purposes.

2. The Union gives unlawful preference to members over nonmembers in assigning jobs. Until unfair labor practice charges were filed in 1954 and early 1955, the collective bargaining agreement expressly provided for such preference, and the International constitution required that preference in hiring also be given to members of sister locals over nonmember applicants. Although the contract provision was purportedly rescinded after the unfair labor practice charges were filed, the preferences required by the contract and by the constitution continued to be afforded to members. The Union business agent continued to keep two lists, one of members and one of nonmembers. When the Companies' chief clerks, who were themselves Union members and who knew which applicants

¹² A member-company's liability for reimbursement is limited to monies paid by its employees so that one company is not liable for refunding monies paid by employees of other companies (J.A. I 340). The period of liability in each case begins 6 months before the service of the initial charge against it (J.A. I 340).

were members, called for men, the business agent read from the lists until the clerks had selected the men they wanted. Under this system, Union members were in fact afforded an unlawful preference.

3. Vinson and Linnenberg, nonmembers of the Union, were unlawfully denied employment because they filed charges against the Union. They first filed charges in early 1954 and early 1955. Beginning in September 1955, they began to get less work and in October 1955, Vinson filed new charges on behalf of himself and Linnenberg. Thereafter their referrals from the Union declined sharply even though they appeared at the hiring hall. In addition, the Union business agent threatened that Vinson would be "beat up" if he persisted in coming to the hall, and advised that neither Vinson nor Linnenberg were welcome there. The Union admits that they received less work after filing the latter charges, but seeks to attribute the loss of employment to their age. Both worked regularly before, however, and at least one other applicant, as old or older, actually increased his earnings while their earnings were declining.

4. Having vested exclusive hiring authority in the Union, the Employers are responsible for the discrimination practiced by the hiring hall. The Employers knew of the practice of hiring exclusively through the hall and are chargeable with the eligibility standards which the Union was thereby allowed to impose. In addition, the Employers are chargeable with the conduct and knowledge of their chief clerks, who as supervisors participated in the discriminatory conduct. Similarly the Union is chargeable with the conduct of its business agent in effecting the discrimination through the chief clerks, in accordance with Union policy.

5. The Board's order requiring reimbursement of fees unlawfully charged nonmembers as a condition of employment is proper. "[T]he order of reimbursement is intended to remove the effects of the unfair labor practice by restoring to the employees what would not have been taken from them if [the Union and the Employers] had not contravened the Act." *Virginia Electric Co. v. N.L.R.B.*, 319 U.S. 533, 544. If the

employees had refused to make the illegal payment, they clearly would be entitled to backpay for the resultant loss of employment without deduction for the percentage fees they had refused to pay. Nothing in *Local 60, United Brotherhood of Carpenters and Joiners v. N.L.R.B.*, 365 U.S. 651 is to the contrary. *Local 60* merely rejected the assumption that members were coerced into retaining membership. The courts, however, have repeatedly recognized the distinction between reimbursement of exactions from members as opposed to exactions from nonmembers. Although nonmembers received some benefit from the hall, despite the discrimination in referrals, the Board's order need not allow for such a dubious benefit incident to the unfair labor practices. Moreover, the percentage payments did not purport to be a fair charge for operation of the hall, but were an exaction from nonmembers as the price for working, an exaction used to support the Local as a whole. In any event, the Union cannot disentangle the consequences of its unfair labor practices from the consequences for which it would not be liable. The Board properly held the Employers jointly and severally liable with the Union, since they participated in the unfair labor practices although they received no part of the percentage fees.

ARGUMENT

I. Substantial evidence on the record as a whole supports the Board's findings that the Union and the employers violated the Act by making designation of Local 1351 and the payment of percentages conditions of employment

As set forth *supra*, p. 3, Local 1351 prohibits its members from obtaining work directly and the Companies, in turn, hire clerks exclusively through Local 1351. As a result, no person can be employed unless his name is on the lists of men available for work prepared by Local 1351's business agent. Furthermore, before a man can get his name on either the member or nonmember list, he must designate Local 1351 as his bargaining representative and agree to pay it a percentage of his wages. In other words, if a man is unwilling to do either or both, he is barred completely from employment with any of the 28 respondent employers. Not only are some of

the employers well aware of the percentage payments but they assist the Union in collecting them by preparing two checks, one in the amount of the percentage and the other for the balance of the wages due. All deliver the checks to the Local for distribution with the result that the business agent is able to compute the percentage due and collect it when the employee picks up his check.

Moreover, it is undisputed that until the settlement agreement, the Local charged nonmembers 5% and members only 2% of their earnings for the privilege of being listed for employment. Although, after the settlement agreement, the Union collected the same percentage from both groups, nonmembers in fact continued to pay more than members. Thus, members receive substantially more benefits from their payments, such as more insurance, *supra*, p. 10. Concededly the money paid by nonmembers goes into the Local's general funds from which it pays purely union expenses which, in 1955, included more than \$4,300 to send Local officers to union conventions, *supra*, p. 11, n. 9. Since the dues of \$1 a month paid by the 80 to 106 members are not sufficient to meet even a small fraction of the Local's expenses, the percentage payments are not geared to the cost of operating the hiring hall but to the cost of operating the Local. Indeed, the Local's financial records show that it lumps together percentages and dues under the heading "dues." (J.A. II 189).¹³ In short, the requirement that nonmembers pay percentages in order to be eligible for work, means that they either contribute financial support to the Union or they do not work.

Furthermore, in November 1955, most of the members received a check for \$100, ostensibly as stockholders in the Avenue N Corporation, *supra*, p. 11. The corporation's officers, who are and always have been the current or past officers of the Local,¹⁴ agreed that the money for the payment came from

¹³ Under these circumstances it is unnecessary to decide whether, as the respondent Unions contend, a union may validly charge each employee his *pro rata* share of the cost of operating the hiring system.

¹⁴ For example, Business Agent Morrow held an office in Avenue N but did not know what it was. Nor did he know how much stock he owned (J.A. II 56). At the time of the hearing, in February 1957, no stockholders' meeting had been held since November 1955, when the payment was voted (Tr. 824-325).

Local 1351 although they were unable to agree on the terms of the "loan" and did not know when it would be repaid, *supra* pp. 11-12. It is also revealing that the payments were made at the time the Local was refunding the percentage payments to members and nonmembers and that it was the only "dividend" ever received by the stockholders, *supra*, p. 11. Accordingly, we submit that the record as a whole fully supports the Board's finding that the \$100 checks "were in effect * * * additional refunds of percentages" to members who as a result received larger refunds than did the nonmembers (J.A. I 267).

Section 7 of the Act guarantees employees the right to choose whether or not they will be represented by a union and to refrain from paying it money without affecting their job opportunities. *Radio Officers' Union v. N.L.R.B.*, 347 U.S. 17, 42. That men desiring employment by the 28 companies here involved were deprived of this right by the hiring arrangement between the employers and Local 1351 is plain. Although Section 8(a)(3) of the Act permits the parties to agree that employees must join the union *after* being employed for thirty days and, thereafter pay uniform dues, etc., it clearly does not sanction an arrangement whereby *eligibility* for employment is conditioned upon designating the Local as their representative and paying it a discriminatory percentage of their earnings. Much less does it permit the imposition of higher payments upon nonmembers than members.¹⁵ Accordingly, the Board properly concluded that by entering into such an arrangement the employers violated Section 8(a)(1) and (3) of the Act and the Unions violated Section 8(b)(1)(A) and (2).

That the Companies' practice of hiring only from the lists of men prepared by the Local's business agent and by, in some cases, preparing two checks, and in all cases delivering them to

¹⁵ See *Virginia Electric and Power Company v. N.L.R.B.*, 319 U.S. 533, 536-539; *Dialo Bedding Co. v. N.L.R.B.*, 268 F. 2d 901, 906-907 (C.A. 5); *N.L.R.B. v. Parker Bros. & Co.*, 209 F. 2d 278, 279 (C.A. 5); *Union Starch Refining Co. v. N.L.R.B.*, 186 F. 2d 1008, 1011-1013 (C.A. 7), cert. denied, 342 U.S. 815; *N.L.R.B. v. Imparato Stevedoring Corp.*, 250 F. 2d 297 (C.A. 3).

the Local for distribution gave assistance and support to the Local in violation of Section 8(a)(2) of the Act is self-evident. *N.L.R.B. v. Parker Bros. Co.*, 209 F. 2d 278, 279, 280 (C.A. 5); *N.L.R.B. v. Gottfried Baking Co.*, 210 F. 2d 772, 779-780 (C.A. 2); *N.L.R.B. v. Waterfront Employers*, 211 F. 2d 946, 951 (C.A. 9).

II. Substantial evidence on the record as a whole supports the Board's findings that the Union and the employers violated the Act by maintaining a hiring arrangement which gave preference in employment to members of Local 1351 and by denying employment to Vinson and Linnenberg because they were not members of Local 1351 and had filed charges with the Board

A. The preference given to members generally

As set forth *supra*, p. 3, the collective bargaining contract specifically provides that members of the Local will have preference in employment for extra work. Although the settlement agreement supposedly rendered this provision inoperative, the record fully supports the Board's finding that the agreement brought about no change in the actual operation of the hiring system.¹⁶

Thus, still in effect after the agreement was the requirement in the constitution of the International that when a Local has more work than its members can do, it must give preference to members of sister locals in the same port, *supra*, p. 3. This provision, as the Board pointed out, obviously contemplates that the Local will give first preference to its own members (J.A. I 331). Similarly unchanged is the provision which imposes upon the business agent the duty to see that members, including himself and the chief clerks who select the men, live

¹⁶ The purpose of a settlement agreement is to secure prompt, actual, and continued compliance with the Act. If the parties thereafter continue their unfair labor practices, the Board can properly consider their conduct before as well as after the agreement. *The Wallace Corp v. N.L.R.B.*, 323 U.S. 248, 253-255; *International Brotherhood of Teamsters, etc., Local 554 v. N.L.R.B.*, 104 App. D.C. 359, 362, 262 F. 2d 456, 460-461 (C.A.D.C.); *N.L.R.B. v. Hawk & Buck Co.*, 120 F. 2d 903, 905 (C.A. 5); *Canyon Corp v. N.L.R.B.*, 128 F. 2d 953, 955-956 (C.A. 8).

up to the rules, *supra*, p. 3.¹⁷ In view of the preference in employment given to members and the greater benefits they receive, such as insurance, *supra*, p. 10, the chief clerks have good reason to want to remain members in good standing. In these circumstances, there can be little doubt that, as the Board found, they do "not disregard the Local's constitutionally imposed policy of preferential hiring" (R. 331). The result was that they regarded the Local as playing an active part in the hiring process. As one of them put it, he hired "through the local with the local's consent" (J.A. II 102, 88).¹⁸

In its turn, the Local has always kept two lists of men available for work—one of members and one of nonmembers—although no legitimate reason for doing so appears. When a chief clerk calls for men, the business agent reads the names of those available, *supra*, p. 5. The record does not disclose which list he reads first but it will be noted that the names of members appear in the first column—that is, on the left hand side of the page—of the business agent's list. A new column is started on the right hand side for nonmembers (J.A. II 267, 269). In addition, the business agent does not read all of the names but may stop after the chief clerk selects the men he wants, which, of course, could be the first names read (J.A. II 77-78, 90).¹⁹ Furthermore, as previously noted, pp. 4-5, *supra*, most of the chief clerks were active union members, serve on its committees, and know who is and who is not a member.

Finally, as demonstrated *infra*, pp. 22-24, nonmembers Vinson and Linnenberg were repeatedly passed over not only in

¹⁷ Of course, as the Union apparently recognizes (Br. 20-24) the Board regarded the existence of these rules not as a violation *per se*, but only together with other evidence of a policy of according preference to members, including testimony that these rules were in fact followed.

¹⁸ There are suggestions in the record that both the employees and the Local consider that the men work "for" the Union (Tr. 864, 895, 740).

¹⁹ The Union's assertion (Br. 19) that the record contains "unrefuted evidence . . . that the lists were read in full" is based on testimony by Chief Clerk Steiner that he had sometimes asked for the entire list to be read. Steiner expressly testified, however, that he did not always wait until the entire list was called but that he immediately hired the man when Morrow "called the name of a man who in [Steiner's] opinion was capable of taking care of the job" (J.A. II 90). Since about 60 men regularly used the list and calls were frequently for only one man, the latter procedure was obviously the more typical (J.A. II 77-78, 302).

favor of members of Local 1351, but also in favor of members of its sister locals as well. That their experience was typical of that of other nonmembers and is not attributable to their personal qualifications, as contended by respondent Local (see *infra*, pp. 23-24), is demonstrated by the fact that the Local's own records disclose that over a 6 months period, the average earnings for members was 60% higher than the average for nonmembers.²⁰ Union records also reveal that only occasionally does any member available for work fail to be selected for work whereas it is equally rare that all or even substantially all nonunion men are selected (G.C. Ex. 21).²¹

The Union argues (Br. 18) that the absence of threats to discriminate against nonmembers unless they join the Union proves that no discrimination was taking place. In the circumstances of this case, however, the lack of such threats is without significance. With Union membership made highly desirable by lower fees and larger benefits, it is clear that nonmembers remained permit men for years because they were not allowed to join the Union. Indeed the record shows that Vinson, for example, tried several times to join the Union beginning in 1947, but was never able to become a member (J.A. II

²⁰ Testimony in the record that some of the Companies frequently employed more nonmembers than members must be read in the light of the fact that there are 28 employers and only 80 to 106 union members, of whom 28 are chief clerks, *supra*, p. 5, n. 4. This means that any time an employer has as many as 7 or 8 rank-and-file clerks, the probabilities are that more of them will be nonmembers than members.

²¹ The Union in its brief (pp. 17-18) argues that Vinson's testimony that he and other nonmembers in the hall were passed over in favor of members of sister locals should be ignored because a number of other nonmembers testified that the referral system was not discriminatory. As noted, *supra*, p. 3, the conduct attributed to Morrow by Vinson is precisely that required by the International constitution, and Vinson's testimony is otherwise corroborated. Moreover, the other witnesses were interested in avoiding the retaliation Morrow had visited on Vinson and Linnenberg for cooperating with the Board. It is settled law that "credibility of witnesses is a matter for Board determination, and not for this Court." *Joy Silk Mills v. N.L.R.B.*, 87 App. D.C. 360, 369, 185 F. 2d 732, 741, cert. denied, 341 U.S. 914; see also *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 494-496. Accordingly, the Board properly found that "in 1955 and up to July 1956 there were occasions when the business agent C. B. Morrow passed over all nonunion men waiting in the hiring hall for assignment and sought men from the [sister locals]" (J.A. I 262).

253-254).²² It thus would be absurd for the Union to threaten employees with discrimination for failing to join the Union when the Union would not allow them to join. Nevertheless, the actual discrimination "encourages" membership in violation of the Act even though the permit men were denied membership. *N.L.R.B. v. Radio Officers' Union*, 347 US. 17, 34-42.

In sum, then, the record amply supports the Board's conclusion that the job preference given to members of Local 1351 by Section 2 of the collective bargaining agreement continued despite the settlement agreement pursuant to which the parties "ostensibly deleted" that section from the contract (J.A. I 332).

B. The discrimination against Vinson and Linnenberg

As stated *supra*, p. 3, in 1954-1955, Vinson and Linnenberg filed charges with the Board alleging that the hiring arrangement between the parties discriminated against nonmembers of Local 1351. For a time after the settlement agreement in the early summer of 1955, the two men apparently received their fair share of employment (J.A. I 273).²³ At least, the Union's daily lists show that between July and September 1955, each was "selected" more often than not (G.C. Ex. 21). However, beginning in September, each failed to get work more often than he got it, *supra*, p. 9, n. 8. Instead, when calls for men came in, Business Agent Morrow referred the request to sister locals although both men were present, seeking work (*supra* p. 7). As a result, on October 6, Vinson, acting on behalf of himself and Linnenberg, again filed charges of discrimination against nonmembers, *supra*, p. 7. From then on, until December 20, Vinson was "selected" only three times and Linnenberg only five although, nearly every day, their names headed the list of available nonmembers (G.C. Ex. 21).²⁴

²² For a discussion of the development in Texas of the practice of limiting union membership while requiring permit fees from nonmembers who desired to work, see *American Federation of Labor v. Meam*, Tex. Civ. App. 188 S.W. 2d 276, 281, 284-285.

²³ The notices provided for in the settlement agreement had to remain posted for only 60 days (J.A. I 72, 80).

²⁴ When, in November 1955, the Local refunded the percentages paid during the previous 6 months, Vinson received only \$36.40 and Linnenberg only \$34.48 (J.A. II 326, 327, 181). Both, therefore, received amounts well below the \$84.11 average even for nonmembers, *supra*, p. 6.

Indeed, two days after Vinson filed the 1955 charge, both he and Linnenberg got telephone calls from an unidentified man warning each to stay away from the Local's hiring hall lest he get hurt. In Vinson's case, the call was followed a day or two later, by a similar threat by Business Agent Morrow. On October 10, in a telephone conversation, Morrow told Vinson, "I want you understand, you old son of a bitch, if you keep coming out here somebody is going to knock you in the head and beat you up * * *. I want you and Linnenberg to understand that you are not welcome out here," *supra*, p. 7. When Vinson ignored the threats and continued to go to the hall, his car was tampered with; when he sought to watch it from inside the hall, Morrow closed the blinds. The following May, Morrow again called Vinson to say that he wanted to talk to Vinson but did not want the latter to tell the NLRB. Vinson, however, replied that he would have to tell the Board. Morrow retorted that if Vinson had not "brought this case up" he would have been "at work just like Wright," another nonmember.

But the Union's irritation with Vinson and Linnenberg stemmed not alone from the fact that they had filed charges, but from a belief that in doing so the two men were engaging in rival union activity. Thus, Union's counsel repeatedly sought to establish at the hearing that Vinson and Linnenberg were in touch with and helping one Frank Yeager, a former official of the Union who now worked for the AFL and was trying to establish competing locals in the area, and that Yeager was "behind" the charges filed by them. (Tr. 616-619, 964-966, 1173).

Although the Union admits (Br. 44) that Vinson and Linnenberg got little work after filing the charges,²⁵ it contends that they were passed over because of their age and because Linnenberg was not willing to work full time lest he lose his

²⁵ Neither Vinson nor Linnenberg was required to continue to seek work once the Local made it clear that it would be futile to do so. Nor is it necessary to finding of discrimination to show that jobs were available when they were at the hall. *N.L.R.B. v. Lummus Co.*, 210 F. 2d 877, 880-881 (C.A. 5); *N.L.R.B. v. Anchor Rome Mills*, 228 F. 2d 775, 780, (C.A. 5); *N.L.R.B. v. Swinerton*, 202 F. 2d 511, 515 (C.A. 9), cert. denied, 346 U.S. 814; *N.L.R.B. v. Local 369, International Hod Carriers' Building and Common Laborers' Union of America, AFL-CIO* 230 F. 2d 539, 544 (C.A. 3).

social-security benefits. The fact remains, however, that prior to the filing of the 1955 charges, both men were selected for work fairly regularly. Indeed, Linnenberg was frequently employed 40 hours a week, *supra*, p. 9, n. 7. It was only after the charges were filed that the two men were found to be unacceptable. Furthermore Wright, who was two years older than Vinson and the same age as Linnenberg, earned \$4,900 in 1956, or about \$900 more than he did in 1954 and 1955.

In sum, then, the record as a whole clearly establishes that the discrimination against Vinson and Linnenberg resulted not only from the practice of giving job preference to members of Local 1351, but also from the fact that the Union regarded their filing of charges as part of a plan to replace the ILA with the AFL. Accordingly, the Board properly concluded that the denial of employment to Vinson and Linnenberg violated Section 8(b)(1)(A) and (2) and Section 8(a) (3) (4) and (1) of the Act.

C. The parties' responsibility for the unfair labor practices found

1. The Employers

As shown above, the Employers vested complete hiring authority in their chief clerks, many of whom had served as officers of the Local and on its bargaining and grievance committees. The companies were therefore well aware that the men who did their hiring were both loyal and active union members. The employers also knew that it was the Local's policy to include in its contracts a provision giving job preference to its members. Yet even after additional charges were filed, following the settlement agreement, the Employers took no steps to assure that their chief clerks did not continue to give job preference to members of Local 1351. As a result, the chief clerks, without exception, testified that the agreement brought about no change in their hiring practices—that is, they were precisely the same as they were when the contract clause which gave job preference to members of the Local was admittedly operative. As applicable case law makes clear, such preferential practices by an employer's hiring agents con-

stitute an unfair labor practice by the employer.²⁶ The employer is no less answerable for such unlawful practice where effected through a union which he has rendered his own hiring agent, through an exclusive hiring agreement or otherwise.²⁷

Nothing to the contrary is contained in the cases cited by the Employers (Br. 16-17) in which the courts held that no exclusive hiring practice was shown to exist. So long as an employer accepts direct job applications on a nondiscriminatory basis he does not violate the Act simply by hiring men whom the union has discriminatorily selected and referred. But where, as here, the employer does hire through the union exclusively, requiring applicants to go through the union even when they apply directly to the employer, he assumes responsibility for the union's discrimination, *supra*, n. 27. In the present case, the Employers knew that their chief clerks refused to hire directly but hired only through the Local. Indeed, the Employers delivered all paychecks to the Union hall, and some Employers went farther and prepared a separate check for the Union's percentage. It was the policy of exclusive hiring through the Union which made it possible for the Union to limit employment to those who designated it as their bargaining representative and paid percentages. An employer cannot limit employment to those who meet the union's eligibility requirements and then avoid liability on the ground

²⁶ *N.L.R.B. v. Penobscot Bay Longshoremen's Local 1519*, 310 F. 2d 689 (C.A. 1); *N.L.R.B. v. E. F. Shuck Construction Co.*, 243 F. 2d 519, 521 (C.A. 9); *Katz v. N.L.R.B.*, 196 F. 2d 411, 415 (C.A. 9); *N.L.R.B. v. Broderick Wood Products Co.*, 261 F. 2d 548, 556-557 (C.A. 10); and cases cited.

²⁷ *Morrison-Knudsen Co., Inc. v. N.L.R.B.*, 275 F. 2d 914, 915-917 (C.A. 2), cert. denied, 366 U.S. 909; *N.L.R.B. v. Local 490, International Hod Carriers*, 300 F. 2d 328, 332 (C.A. 8); *N.L.R.B. v. The Lummas Co.*, 210 F. 2d 377, 380 (C.A. 5); *N.L.R.B. v. George D. Auchter Co.*, 209 F. 2d 273, 275-277 (C.A. 5); *N.L.R.B. v. Millwrights' Local 2232*, 277 F. 2d 217, 218, 220 (C.A. 5), cert. denied, 366 U.S. 908; *N.L.R.B. v. Local Union No. 85, Sheet Metal Workers' International Association*, 274 F. 2d 344, 344-346 (C.A. 5), cert. denied, 366 U.S. 908; *N.L.R.B. v. Local 450, International Union of Operating Engineers*, 281 F. 2d 313, 315-316 (C.A. 5), cert. denied, 366 U.S. 909; *N.L.R.B. v. United States Steel Corporation*, 278 F. 2d 896, 897-898 (C.A. 3), cert. denied, 366 U.S. 903; *N.L.R.B. v. Imperato Stevedoring Co.*, 250 F. 2d 297 (C.A. 3); *N.L.R.B. v. Construction Specialties Co.*, 208 F. 2d 170 (C.A. 10); *N.L.R.B. v. Waterfront Employers of Washington*, 211 F. 2d 946, 949-950, 953-954 (C.A. 9); see also cases cited in n. 28, p. 26, *infra*.

that he does not know what those requirements are.²⁸ In any event, the Employers are chargeable with the conduct and knowledge of the chief clerks, who were both supervisors and Union officers or members.²⁹

2. The Union

The Union argues (Br. 20-24) that since the chief clerks were agents of the Companies, it cannot be held liable if the clerks choose to give job preference to members of the Local. But this contention ignores the very real pressure which the Union brings to bear upon the chief clerks as union members. In the first place, since the Union confers greater benefits upon members than on nonmembers, the chief clerks have good reason for wanting to retain their union membership. In the second place, the chief clerks hire men by calling the business agent, whose duties include seeing to it that members abide by the rules, one of which is that members have job preference. Under these circumstances, the Union can scarcely disclaim responsibility when the chief clerks abide by the Union's rules. The *de facto* control over hiring thus given the Union is illustrated by the discrimination against Vinson and Linnenberg in particular after Morrow had told them to stay away from the hall. These circumstances amply justified the Board's finding that the Union is answerable for the discriminatory practices carried out through the chief clerks.³⁰

²⁸ *Morrison-Knudsen Co., Inc. v. N.L.R.B.*, 275 F. 2d 914, 925 (C.A. 2), cert. denied, 306 U.S. 909; *N.L.R.B. v. Steinertson*, 202 F. 2d 511, 513-514 (C.A. 9), cert. denied, 346 U.S. 814; *N.L.R.B. v. Waterfront Employers of Washington*, 211 F. 2d 946, 954 (C.A. 9); *N.L.R.B. v. Imperato Stevedoring Co.*, 250 F. 2d 297, 301-303 (C.A. 3); *N.L.R.B. v. International Longshoremen's and Warehousemen's Union*, 210 F. 2d 581, 584 (C.A. 9); *N.L.R.B. v. I.L.W.U. Local 10*, 214 F. 2d 778, 779-780 (C.A. 9). See also, *N.L.R.B. v. American Furnace Co.*, 158 F. 2d 376, 379 (C.A. 7); *N.L.R.B. v. Taylor-Colquitt Co.*, 140 F. 2d 92, 93-94 (C.A. 4).

²⁹ *International Association of Machinists v. N.L.R.B.*, 311 U.S. 72, 79-80; *Solvay Process Co. v. N.L.R.B.*, 117 F. 2d 83, 85 (C.A. 5); *N.L.R.B. v. Abbott Worsted Mills*, 127 F. 2d 433, 440 (C.A. 1); *Time-O-Matic, Inc. v. N.L.R.B.*, 264 F. 2d 96, 99-100 (C.A. 7); *N.L.R.B. v. Texas Mining & Smelting Co.*, 117 F. 2d 86, 88-89 (C.A. 5); *Humble Oil Co. v. N.L.R.B.*, 140 F. 2d 771, 773-779 (C.A. 5); *N.L.R.B. v. Jerka Corp.*, 198 F. 2d 618, 620 (C.A. 3).

³⁰ See, *Carpenters' District Council of Detroit v. N.L.R.B.*, 100 App. D.C. 209, 212-213, 285 F. 2d 289, 292-293 (C.A.D.C.); *N.L.R.B. v. Local Union*

Furthermore, when a call for men comes in and no more members are available, Business Agent Morrow discriminatorily transmits the Company's requests for men to sister locals, again as the constitution of the International requires him to do, even though nonmembers may be in the hall. But even more important is the fact that the Local lists as available for work only those who designate it as their bargaining representative and pay it a percentage of their wages. It follows, therefore, that the Local directly causes the companies to discriminate in favor of those who meet the Union's demands and against those who chose to exercise their statutory right to refrain from doing so. Cf. *N.L.R.B. v. Local 392, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, etc.*, 277 F. 2d 56, 57 (C.A. 7). Since the Local's action is in major part required by the constitution of the International,²¹ the latter is in effect, as the Board found, a "co-sponsor of the hiring hall" and equally liable for the unfair labor practices arising out of its operation.

III. The Board's reimbursement order is valid and proper

A. The Board properly required reimbursement to the employees of the percentages which they were coerced into paying as a condition of employment

We have shown on pp. 16-22, *supra*, that nonmembers were unlawfully compelled to pay a percentage of their wages as a condition of employment. The natural and obvious remedy for

No. 450, International Union of Operating Engineers, 281 F. 2d 313, 315-316 (C.A. 5), cert. denied, 386 U.S. 909; *N.L.R.B. v. Minnwrights' Local 2232*, 277 F. 2d 217, 220 (C.A. 5), cert. denied, 386 U.S. 908; *N.L.R.B. v. International Longshoremen's Union*, 210 F. 2d 581, 584 (C.A. 9); *N.L.R.B. v. Cement Masons Local 555*, 225 F. 2d 168, 173 (C.A. 9); *N.L.R.B. v. Local 1566, International Longshoremen's Association*, 278 F. 2d 883, 885-886 (C.A. 3), cert. denied, 364 U.S. 890, 366 U.S. 909; *N.L.R.B. v. Local 369, International Hod Carriers*, 240 F. 2d 539, 543 (C.A. 3); *N.L.R.B. v. Local 743, United Brotherhood of Carpenters and Joiners of America, AFL*, 202 F. 2d 516, 518 (C.A. 9); *N.L.R.B. v. International Association of Heat & Frost Insulators*, 261 F. 2d 347, 350 (C.A. 1).

²¹ As set forth, *supra*, p. 17, n. 11, the Board did not find the International responsible for the discrimination against Linnenberg.

such unfair labor practices is an order requiring reimbursement of these payments. This is precisely what the Board's order in the instant case requires. In other words, " * * * the order of reimbursement is intended to remove the effects of this unfair labor practice by restoring to the employees what would not have been taken from them if the Union and the Employers had not contravened the Act." *Virginia Electric & Power Co. v. N.L.R.B.*, 319 U.S. 533, 544. Anything less, we submit, would permanently deprive the nonmember employees of sums they were unlawfully required to pay in order to get their jobs. In fact, under the circumstances of this case, this remedy is similar to a back pay order. If the nonmember employees had exercised their statutory right to refrain from paying these percentages, and as a result had failed to obtain jobs, they would plainly have been entitled to back pay, and one would hardly suggest that it should be diminished by the amount of the percentages which they did not pay. In the instant case, the nonmember employees chose to pay the percentages, although they were illegally exacted, in order to be able to work. They should not suffer a monetary loss because they chose the lesser of the two evils. Similar reimbursement orders have been approved by the Supreme Court and other Courts of Appeals in the cases cited below.²²

²² *Virginia Electric & Power Co. v. N.L.R.B.*, 319 U.S. 533, 543-545; *Diets Bedding Manufacturing Company v. N.L.R.B.*, 268 F. 2d 901; *N.L.R.B. v. Local 420, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL*, 239 F. 2d 327, 331 (C.A. 3); *N.L.R.B. v. Local 404, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL*, 205 F. 2d 99, 103-104 (C.A. 1); *N.L.R.B. v. Broderick Wood Products Co.*, 261 F. 2d 548, 558-559 (C.A. 10); *N.L.R.B. v. General Drivers, Chauffeurs and Helpers Local Union No. 886*, 264 F. 2d 21, 23 (C.A. 10); *N.L.R.B. v. Teamsters and Allied Workers, Hawaii Local 996*, 313 F. 2d 655, 660-661 (C.A. 9); *N.L.R.B. v. Cadillac Wire Corp.*, 290 F. 2d 261, 263 (C.A. 2); *N.L.R.B. v. Revere Metal Art Co.*, 280 F. 2d 96, 101 (C.A. 2), cert. denied, 364 U.S. 894; *Paul M. O'Neill International Detective Agency v. N.L.R.B.*, 280 F. 2d 986, 947-949 (C.A. 3); *Morrison-Knudsen Co. v. N.L.R.B.*, 276 F. 2d 63, 73-74

Contrary to the Union's contention (Br. 35-39) this order is wholly consistent with *Local 60, United Brotherhood of Carpenters and Joiners v. N.L.R.B.*, 365 U.S. 651. In *Local 60*, the Supreme Court disapproved a Board order which required the repayment of dues, assessments, and work permit fees (paid by members of a sister local), on the ground that all the employee beneficiaries of the order, although subject to an unlawful closed-shop agreement, had been members when hired and "so far as we know * * * for years on end" (365 U.S. at 654). The court observed that trade unions arose as "voluntary associations formed to meet pressing needs in a complex society" (365 U.S. at 656). Under these circumstances, the court stated, the Board could not presume that payments by "a lot of old-time union men" were coerced, nor require repayment absent "evidence that membership was induced, obtained, or retained in violation of the Act."²³

(C.A. 9); *N.L.R.B. v. Television and Radio Broadcasting Studio Employees, Local 804*, 315 F. 2d 393, 404 (C.A. 3); see also, *N.L.R.B. v. Marcus Trucking Co.*, 286 F. 2d 583, 595 (C.A. 2), discussed in *Marcus Trucking Co.*, 137 NLRB 1378, 1378-1379; *N.L.R.B. v. Food Fair Stores, Inc.*, 307 F. 2d 3, 19-21 (C.A. 3).

Cf. *Local 138, International Union of Operating Engineers v. N.L.R.B.*, 53 LRRM 2754, 2757, 2758, 47 L.C. ¶ 18,352 (C.A. 2, July 8, 1963), involving an exclusive hiring hall which (unlike the hiring hall in the instant case) had not been the target of attack by nonmembers and did not effect "blanket discrimination" against nonmembers (although it did effect "some discrimination"; members' seniority began to accumulate from the date of their initiation, and not from the date that they started work on a job obtained through the hall as did nonmembers; and nonmembers could retain seniority only by paying permit fees which equalled union dues but for which they did not receive all the benefits of union membership). In that case, the court limited the reimbursement order to the difference between what the nonmembers paid and what was "reasonably related to the value of the services provided by the union, having in mind also the cost to the union of performing such services."

"* * * Local 60 made an illegal closed shop contract with an employer. But the employees were already members of the Carpenters' Union, and to them it made no difference whether they worked under a closed shop.

In the case at bar, however, the reimbursement order is limited to nonmembers, who would not freely pay substantial sums to a union which gives preference in employment to members. See, *Porter-DeWitte Construction Co.*, 134 NLRB 963, 970-971. Where a reimbursement order involves such payments by nonunion men, no showing need be made that each individual beneficiary of the order was coerced into making them; such a requirement "would impose impossible administrative burdens." *N.L.R.B. v. Cadillac Wire Corp.*, 290 F. 2d 261, 263 (C.A. 2); see also, *N.L.R.B. v. Television and Radio Broadcasting Studio Employees, Local 804*, 315 F. 2d 398, 402 (C.A. 3); *N.L.R.B. v. Teamsters and Allied Workers, Hawaii Local 996*, 313 F. 2d 655, 660-661 (C.A. 9); *Dixie Bedding, supra*, 208 F. 2d at 907. The testimony of clerks who testified on the Union's behalf that they paid the percentages willingly is entitled to little weight, particularly in view of the Union's control over their ability to obtain work and the previous exercise of this control to penalize Vinson and Linnenberg for cooperating with the Board. See, *N.L.R.B. v. Donnelly Garment Co.*, 330 U.S. 219, 232. The Board's power to require reimbursement of nonmembers' payments, under circumstances where perhaps it could not order reimbursement of members' payments, has been recognized by the Courts of Appeals. *Dixie Bedding, supra*; *N.L.R.B. v. Revere Metal Art Co.*, 280 F. 2d 96, 100-101 (C.A. 2), cert. denied, 364 U.S. 894; *N.L.R.B. v. Marcus Trucking Co.*, 286 F. 2d 583, 595 (C.A. 2); * *N.L.R.B. v. Teamsters and Allied Workers, Hawaii Local 996*, 313 F. 2d 655, 660-661 (C.A. 9); *N.L.R.B. v. Television and Radio Broadcasting Studio Employees, Local 804*, 315 F. 2d 398, 402 (C.A. 3); *Morrison-Knudsen, Inc. v. N.L.R.B.*, 276

which the law forbade, or a union shop, which would have been lawful. The illegal effect of the closed shop was only upon non-employees, who could not get jobs unless they first joined the union. The union members were, presumably, as willing to pay their dues as they had been before the closed shop agreement was made. The effect of requiring reimbursement of such dues would not have been to put money back in the pockets of workmen from whose pocket it had been abstracted against their will, but to punish the union for violating the law." *N.L.R.B. v. Teamsters and Allied Workers, Hawaii Local 996*, 313 F. 2d 655, 660 (C.A. 9).

* See the discussion of this opinion in *Marcus Trucking Co.*, 137 NLRB 1378, 1378-1379.

F. 2d 63, 73-74 (C.A. 9). The Board's requirement that nonmembers be reimbursed for the payments which they made to the Union merely follows this line of authority thus established by prior precedents.

B. The reimbursement order is not rendered inappropriate by the fact that despite the discriminatory hiring practice, nonunion clerks obtained jobs through the Union hall

Nor is the reimbursement order inappropriate because there were more jobs to be filled than member clerks available to fill them, and nonmember clerks did obtain jobs at the hall. As the Supreme Court observed with respect to a similar contention in *Virginia Electric & Power Co. v. N.L.R.B.*, 319 U.S. 533, 544, "The fact that the Board may only have approximated its efforts to make the employees whole, because of asserted benefits of dubious and unascertainable nature flowing from the [union], does not convert this reimbursement order into the imposition of a penalty." Accord: *N.L.R.B. v. General Drivers, Chauffeurs and Helpers, Local Union No. 886, affiliated with International Brotherhood of Teamsters*, 264 F. 2d 21, 23 (C.A. 10); *N.L.R.B. v. Local 404, International Brotherhood of Teamsters*, 205 F. 2d 99, 104 (C.A. 1).³⁸ ~~The record shows that the "benefits" for which the Union seeks to retain payment were "dubious" indeed as far as the nonmember clerks were concerned, and accrued largely to the Union which used the hall to effectuate preference to members in employment and to discipline nonmembers who sought to exercise their statutory rights to select a bargaining representative.~~

Moreover, without regard to discrimination in assigning work, the percentage charges were themselves discriminatory. As shown, *supra*, p. 10, until the first unfair labor practice charge was filed, the Union required a nonmember to pay 5 percent of his salary to secure the same job that a member

³⁸ For example, the possibility that the Board's method for computing back pay on a quarterly basis may yield to an employee "a greater amount than he would have received had he worked at his regular job" does not invalidate that method. *N.L.R.B. v. Seven-Up Bottling Co. of Miami, Inc.*, 344 U.S. 344, 355 (dissenting opinion). Nor does the receipt of collateral benefits resulting from an unlawful discharge preclude a requirement of full payment of lost wages, even though the overall amount received exceeds such wages. *Gullett Gin Co. v. N.L.R.B.*, 340 U.S. 361, 364.

could have for 2 percent. With the settlement agreement, the Union discontinued the overt discrimination, only to replace it with the device of charging members and nonmembers the same fee, then reimbursing members in their capacity as stockholders in the Avenue N Corporation.³⁶ Even with reimbursement of members, the Union still had ample surplus to finance purely union expenses from the fund derived in large part from percentages collected from nonmembers. In short, the percentage payments never purported to be a "fair" charge for the use of the hiring hall but were in fact a deliberate exaction from nonmembers as the price for working. Nevertheless, the Union urges (Br. 40-42) that since the employees received some benefit, the Board must compute the "fair" charge for the involuntary use of the discriminatory hiring hall and limit the reimbursement remedy to the balance of the percentages. As we show, *supra*, p. 31, the Union's assertion that every incidental employee benefit must be allowed for in providing a remedy is erroneous. In addition, the Union's position assumes that if it had been forced to choose between operating lawfully or not at all, it would have operated the hall with charges limited to actual costs and nonmembers fairly referred. If the Union had decided not to operate under such conditions, the employees could have gotten their own jobs without paying any fee. Or if the Union chose to operate an avowed members-only hall—which could not legally be exclusive—the nonmembers might have established their own hall as a rival union (see, *supra*, p. 23). Since the continued lawful operation of the hall is speculative, it is now impossible to determine what, if any, hiring hall fees would have been received in the absence of the unfair labor practices. "[I]t rested upon the tortfeasor[s] to disentangle the consequences for which [they were] chargeable from the consequences from which [they were] immune" (*N.L.R.B. v. Remington Rand*,

³⁶ The Union now suggests (Br. 41) that perhaps the Local's initiation fee, an amount unspecified in the record, might account for the lower percentage charged members. The one-time payment of an initiation fee, however, could hardly be the basis for disparate charges lasting over several years, and the periodic dues, which would normally contain the charges for current services to members, are only \$1 a month.

Inc., 94 F. 2d 862, 872 (C.A. 2), cert. denied, 304 U.S. 576);²⁷ and this they cannot do.

C. The Board properly made the Employers jointly and severally liable with the Union for reimbursement of percentages

As previously noted, under the Board's order the Employers are jointly and severally liable with Local 1351 and the international for reimbursement of percentages. Employers have repeatedly been charged with responsibility for such reimbursement, both in cases where, as here, the union is also a party respondent and is hence jointly and severally liable,²⁸ and in cases where the employer alone is named in the order.²⁹ Although the payments were actually received by the union, and not by the employer, this does not make improper a reimbursement order directed to both of them; for the remedial purpose of the order includes making the employees whole for the losses inflicted on them by the unlawful exaction of such payments, and is not limited to preventing any benefit which may have resulted from their unlawful receipt. Cf. *N.L.R.B. v. Coats & Clark, Inc.*, 241 F. 2d 556, 561 (C.A. 5). We note that in the case at bar the Employers also benefited from the Union's expenditures in operating the hall; for the hiring hall system saved the Employers the trouble and expense of making a search for clerks whenever a job arose, and enabled them to

²⁷ See also, *General Drivers and Helpers Union, Local 662 v. N.L.R.B.*, 112 App. D.C. 323, 302 F. 2d 908, cert. denied, 371 U.S. 827; *N.L.R.B. v. Television and Radio Broadcasting Studio Employees, Local 804*, 315 F. 2d 398, 402 (C.A. 3); *N.L.R.B. v. Swinerton*, 202 F. 2d 511, 515-516 (C.A. 9), cert. denied, 346 U.S. 814; *N.L.R.B. v. Wooster Division of Borg-Warner Corp.*, 238 F. 2d 898, 907 (C.A. 6), modified in respects immaterial here, 356 U.S. 342; *N.L.R.B. v. Wichita Television Corp.*, 277 F. 2d 579, 584 (C.A. 10), cert. denied, 364 U.S. 871; and cases cited.

²⁸ *Local Lodge, 1424*, *supra*, 105 App. D.C. at 109, 264 F. 2d at 582; *N.L.R.B. v. Cadillac Wire Corp.*, 290 F. 2d 261, 263 (C.A. 2); *N.L.R.B. v. Broderick Wood Products Co.*, 261 F. 2d 548, 558-559 (C.A. 10); *Morrison-Knudsen Co. v. N.L.R.B.*, 276 F. 2d 63, 73-74 (C.A. 9); *N.L.R.B. v. Food Fair Stores, Inc.*, 307 F. 2d 3, 19-21 (C.A. 3).

²⁹ *Virginia Electric & Power Co. v. N.L.R.B.*, 319 U.S. 533, 543-545; *Disio Bedding Manufacturing Co. v. N.L.R.B.*, 268 F. 2d 901, 907 (C.A. 5); *N.L.R.B. v. Marcus Trucking Company, Inc.*, 286 F. 2d 583, 595 (C.A. 2); *Paul M. O'Neill International Detective Agency v. N.L.R.B.*, 280 F. 2d 936, 947-949 (C.A. 3).

obtain the necessary number of competent employees on short notice merely by calling the Union.

The considerations which warrant the Board in naming the employer in such reimbursement orders are very similar to those which have led the courts to approve Board orders imposing similar liability on employers who have engaged in union-caused discrimination. Employers who have unlawfully discharged employees because of union pressure have long been held answerable for the loss of pay thus inflicted on them, in order to insure that any financial inability by the union to pay the back pay will not inflict a loss on the employees whom both the union and the employers have wronged.⁴⁰ Such considerations are equally cogent with respect to reimbursement orders like that in the case at bar.

The Employers tender no cogent reason why an exception in their favor should be made to the long standing practice of imposing liability on employers whose delegation of their hiring function to a union has made possible the illegal exactions whose restoration is required. The record lacks the slightest evidence that the Employers ever made any effort to determine whether the union hiring hall through which all of its clerks were compelled to obtain their jobs was operating in a nondiscriminatory manner. The discriminatory operation of the hiring hall continued—without, so far as the record shows, any protest or even inquiry by the Employers—after the Employers were served with charges complaining of the discriminatory practice. Moreover, the discriminatory hiring system was effectuated in part through the Employers' own supervisors, the chief clerks (pp. 4-5, *supra*). In view of the Employers' failure to take any steps whatever to neutralize the Union's unlawful conduct, they are in no position to seek exemption from the liability normally incurred by an employer who, by executing an exclusive hiring agreement,

⁴⁰ *Acme Mattress Co., Inc.*, 91 NLRB 1010, 1015-1017, enforced, 192 F. 2d 524 (C.A. 7); *N.L.R.B. v. George D. Auchter Co.*, 209 F. 2d 273 (C.A. 5), enforcing 102 NLRB 881, 885-889, 905-906; *N.L.R.B. v. Alaska Steamship Co.*, 211 F. 2d 357, 360, n. 4 (C.A. 9); see also, *Radio Officers' Union v. N.L.R.B.*, 347 U.S. 17, 46-48, and cases cited in n. 38, *infra*.

has empowered the contracting union to effect unlawful discrimination.⁴¹

CONCLUSION

For the reasons stated, it is respectfully submitted that a decree should issue enforcing the Board's order in full.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

MARCEL MALLET-PREVOST,
Assistant General Counsel,

ELLIOTT MOORE,
Attorney,

National Labor Relations Board.

SEPTEMBER 1963.

⁴¹ Cf. the following cases where union strikes or threatened strikes have provided no defense to the employer's joint and several backpay liability for the resulting discrimination: *Union Starch & Refining Co. v. N.L.R.B.*, 186 F. 2d 1008, 1013-1015 (C.A. 7), cert. denied, 342 U.S. 815; *N.L.R.B. v. Pinkerton's National Detective Agency*, 202 F. 2d 230, 232 (C.A. 9); *N.L.R.B. v. Puerto Rico Steamship Association*, 211 F. 2d 274 (C.A. 1); *J. A. Utley Co. v. N.L.R.B.*, 217 F. 2d 885, 886 (C.A. 6), enforcing 108 NLRB 295, 301; *N.L.R.B. v. Newspaper and Mail Deliverers' Union of New York and Vicinity*, 192 F. 2d 654, 656 (C.A. 2); *N.L.R.B. v. Peerless Quarries, Inc.*, 193 F. 2d 419, 420 (C.A. 10); *N.L.R.B. v. Bull Insular Lines, Inc.*, 233 F. 2d 318 (C.A. 1), enforcing 108 NLRB 433, 434; *N.L.R.B. v. Oertel Brewing Co.*, 197 F. 2d 59 (C.A. 6); *N.L.R.B. v. Waterfront Employers of Washington*, 211 F. 2d 946, 955 (C.A. 9), enforcing 98 NLRB 284, 285.

APPENDIX A

Below 134 ~~34~~ UNION APPLICANTS FOR EXTRA BOARD WORK

Byrnes.....	\$178.79	Marx.....	\$108.30
Burks.....	150.33	Morgan.....	170.07
Cherry.....	172.33	R. N. Morrow....	90.13
Currie.....	101.41	Perkins.....	126.85
Flynn.....	55.99	Philips.....	149.60
Hatcher.....	173.72	Reid.....	81.30
T. J. Hooks.....	145.83	Reitz.....	153.10
King.....	199.15	Stockton.....	128.95
Logan.....	88.00		
Martin.....	168.74	Total refund...	\$2,412.49

Average refund to union applicant \$134.02

Above 134.00 = 8 NONUNION APPLICANTS FOR EXTRA BOARD WORK

Allen ¹⁰	\$56.71	Meyers.....	\$59.03
Bauer.....	106.52	Myatt.....	77.06
Brooks.....	96.14	J. Nelson.....	125.12
M. E. Casey, Jr....	7.10	Osbourne.....	92.70
W. B. Casey.....	66.10	Reinhart.....	105.52
Chaman.....	28.25	Rich.....	112.92
Chancellor.....	36.10	Robinette.....	80.33
Coles.....	153.06	Schreiber.....	159.36
Cornelius.....	145.47	Seidel.....	.15
Craig.....	30.20	Server.....	87.05
Curry.....	119.62	Shepard.....	123.84
Field.....	.10	J. A. Smith.....	151.65
Fowler.....	67.44	J. G. Smith.....	192.34
Group.....	148.23	Tripp.....	162.70
Hodges.....	67.35	Vinson.....	36.40
Holland.....	64.34	Ward.....	.20
Hutson.....	35.61	Warner.....	86.75
Kee.....	4.60	Wise.....	49.55
Kutchinsky.....	101.66	Worthington.....	.40
Laird.....	187.96	O. O. Wright.....	77.25
Linnenberg.....	34.48		
Lower.....	111.61	Total refund...	\$3,785.13
K. Moore.....	\$31.70		

Average refund to nonunion applicant \$84.11

of the top 10 money-earners
half were non-members

Because of the voluminousness of G.C. Exh. 21, the Local's scratch pad covering job applications and referrals of extra workers during the latter part of 1955, and the technical difficulty in presenting it *in toto* in the Board's Appendix, only the first and facing pages of the exhibit are therein reproduced, in order to show the format of that record. The entire original exhibit is being lodged with the clerk of this Court.

It would appear that G.C. Ex. 43-E (J.A. II 328), stated by counsel to be a part of the list of nonunion employees (J.A. II 178-179) was erroneously described. It is evident that G.C. Ex. 34-E is a continuation in alphabetical sequence of G.C. Ex. 34-A (J.A. II 324) which, together with G.C. Ex. 24-B (J.A. II 325) lists members of the Local. This fact is confirmed by the circumstance that the names of 6 job applicants listed in the union members' column of G.C. Ex. 21 (J.A. II 320 *et seq.*), namely, R. H. Morrow, E. B. Perkins, H. Phillips, G. H. Reid, H. Reitz and B. A. Stockton, can be found only in G.C. Ex. 34-E (J.A. II 328). G.C. Ex. 43-B appears to be a list of those union members who are chief clerks (see J.A. II 25-31, 258-259, 285-286). The foregoing calculations were made accordingly.

10-23-63
(2)

BRIEF FOR PETITIONERS IN NO. 17,521

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA Circuit

FILED AUG 20 1963

No. 17,521

Nathan J. Paulson

LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS,
INTERNATIONAL LONGSHOREMEN'S ASSOCIA-
TION, AFL-CIO, INTERNATIONAL LONGSHORE-
MEN'S ASSOCIATION, AFL-CIO, AND C. B.
MORROW, B.A. OF LOCAL 1351,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 17,631

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

HOUSTON MARITIME ASSOCIATION, INC.,
MASTER STEVEDORES ASSOCIATION OF TEXAS
AND THE INDIVIDUAL RESPONDENT COMPANIES
WHO ARE MEMBERS OF THOSE ASSOCIATIONS,

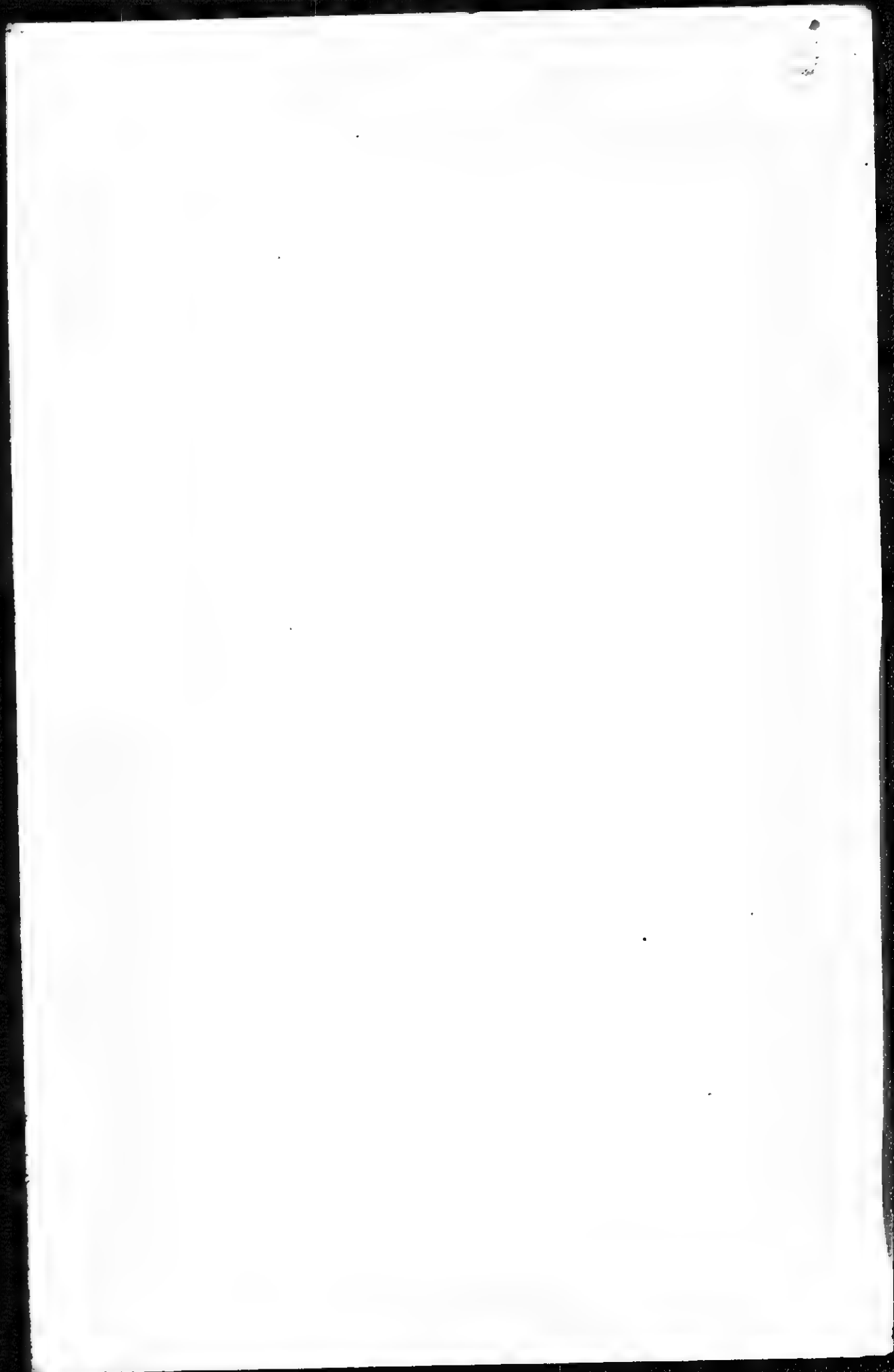
Respondents.

**ON PETITION TO REVIEW AND SET ASIDE
AN ORDER OF THE NATIONAL LABOR RELATIONS
BOARD**

HERBERT S. THATCHER
1009 Tower Building
Washington 5, D. C.

SEWALL MYER
900 First City National
Bank Building
Houston 2, Texas

Attorneys for Petitioners in No. 17,521,



STATEMENT OF QUESTIONS PRESENTED

1. Whether substantial evidence on the whole record supports the Board's findings that respondent Employers violated Section 8(a)(1), (2) and (3) of the Act and petitioner Unions violated Section 8(b)(1)(A) and (2) of the Act by maintaining a hiring system, practice, or arrangement granting preference in employment to members of petitioner Unions, or unlawfully requiring employees or applicants for employment, as a condition of employment, to designate petitioner Local 1351 as their bargaining agent, or unlawfully requiring nonmember employees or applicants for employment, as a condition of employment, to pay or agree to pay to Local 1351 a percentage of their earnings derived from such employment.

2. Whether substantial evidence on the whole record supports the Board's finding that petitioner Unions violated Section 8(b)(2) and (1)(A) by causing or attempting to cause respondent Employers to discriminate against employees because they were not members of Local 1351 or because they had filed charges with the Board, and respondent Employers violated Section 8(a)(3) and (1) of the Act by so discriminating.

3. Whether the Board properly ordered petitioner Unions and respondent Employers, jointly and severally, to reimburse all present and former employees the percentage of their wages paid to respondent Local 1351 at a time that they were not members of that organization.

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,521

LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS,
INTERNATIONAL LONGSHOREMEN'S ASSOCIA-
TION, AFL-CIO, INTERNATIONAL LONGSHORE-
MEN'S ASSOCIATION, AFL-CIO, AND C. B.
MORROW, B.A. OF LOCAL 1351,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 17,631

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

HOUSTON MARITIME ASSOCIATION, INC.,
MASTER STEVEDORES ASSOCIATION OF TEXAS
AND THE INDIVIDUAL RESPONDENT COMPANIES
LISTED ON APPENDIX A HEREIN, WHO ARE
MEMBERS OF THOSE ASSOCIATIONS,

Respondents.

BRIEF FOR PETITIONERS IN NO. 17,521

JURISDICTIONAL STATEMENT

This case is before the court on the Petition of Local 1351, Steamship Clerks and Checkers, International Longshoremen's Association, AFL-CIO and others filed pursuant

to Section 10(f) of the Labor Management Relations Act of 1947, as amended, 61 Stat. 136, 29 U. S. C. Sec. 151, *et seq.* (hereafter called the Act), to review and set aside a Decision and Order of the National Labor Relations Board (J.A.I. 369, 139 NLRB No. 9) issued against Petitioners on October 22, 1962, pursuant to Section 10 (c) of the Act. The Respondent, National Labor Relations Board, has cross-petitioned for enforcement of this order. (17,631)

The jurisdiction of this Court is invoked under Section 10(f) of the Act.

STATEMENT OF THE CASE

1. Statement of the Facts Involved

This case involves the alleged discriminatory operation of a hiring hall maintained by petitioner Local 1351 through which various stevedoring companies in the Houston, Texas, area obtained certain clerks and checkers. In addition, the case involves charges of discrimination in hiring against two individual job applicants, not members of the Local. After almost 10 years of litigation before the National Labor Relations Board, the case is now before this court. The case has been twice decided by the Board but only once by a trial examiner, and varying violations were found to exist. In each instance different remedies were applied, culminating in the present remedy which requires petitioners and the employers to make back wage payments to the two individuals and to return all service fees paid the local by non-members for the referral and hiring services.

The case arose as follows: In October of 1953 a collective bargaining agreement was entered into between petitioner Local 1351 and the two maritime associations, parties to this proceeding which represented stevedoring companies in the Houston and Galveston areas. (J.A. I, 255). Local 1351 is a local union of a little over 100 members affiliated with the International Longshoremen's Association, AFL-CIO. It takes into membership clerks and

checkers employed by stevedoring companies on the Houston waterfront. (J.A. I, 245). The collective agreement at that time contained the following two clauses (J.A. I, 256):

"1. The members of the Parties of the First Part [Respondent Associations] shall have the right to employ members of the Party of the Second Part [Local 1351 and Local 1665], calling them by name to be used as regular salaried Wharf Clerks, extra Wharf Clerks or Timekeepers as provided in Paragraph 4, Section B and C thereof: It being distinctly understood that the employer has the right during the life of this contract to call regular monthly men, extra Wharf Clerks and Timekeepers by name and complete discretion as to the number of regular men to be carried on the monthly payroll, varying the number as they see fit with the usual proper notice of fifteen days.

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2. Members of the Party of the Second Part [Local 1351 and Local 1665] shall have preference of all work pertaining to extra Clerking, Timekeeping, Checking and Tallying as defined in Section 1, Paragraph A hereof. The Party of the second part shall reserve the right to rotate work among these Checkers and Tallymen."

Pursuant to the foregoing agreement, the union maintained a hiring hall through which the employer members of the maritime associations obtained their clerks and checkers. Late in 1954 and early in 1955 charges against the union and the employers were filed by three individual non-member job applicants, G. R. Vinson, Frank Linnenberg, and H. H. Field, the first two being the back-pay awardees in the present proceeding. These charges alleged in substance that the hiring hall arrangement was illegal both on its face and in operation and discriminated against the non-members by requiring them to pay a higher service fee than members. (J.A. I, 245 *et. seq.*) The charges were settled pursuant to a settlement agreement under which clause two of the above agreement was deleted, and the service fees of members and non-members were equalized at 3 percent of wages paid. (J.A. I, 268). Pursuant to this settlement agreement the union agreed not to discriminate

in any way against non-members and posted notices to that effect. (J.A. I, 252, 256, 264) This was in May of 1955. In October of that year Vinson, Linnenberg and Field again filed charges alleging discrimination in referral against them because they were non-members and because they had filed the previous charges and alleging that the hiring hall was illegally operated. (J.A. I, 252) Pursuant to these charges the Board issued its complaint in the present case which alleged that the hiring hall was illegal, that referrals under the hiring hall were discriminatory as to non-members, exaction of percentages as between members and non-members for referral services was discriminatory and that Vinson, Linnenberg and H. H. Field were particularly discriminated against in their referrals. (J.A. I, 124, 254)

At the hearing on the complaint the following facts were developed: The Union maintained its hiring hall and office at the waterfront in Houston. Through this hall various stevedoring companies obtained both regular and so-called "extra" clerks and checkers. Regular clerks and checkers are employed on a steady basis and paid by the month. Extra clerks are hired and paid by the job as shipments come in or are sent out. This case involves these extras. (J.A. I, 258 *et. seq.*)

The hall itself was operated as follows: The Union keeps lists of available extra clerks and checkers at its office; the lists contain the names of members on one sheet and of non-members on another. The lists were not available for inspection. Under the arrangement between the employers and the union, whenever the employer needed an extra checker or clerk, the company's Chief Clerk, who was a high level supervisor with full authority to hire and fire, would call the business agent of the local on behalf of the employer and tell him the anticipated number of clerks and/or checkers needed, the time when they would be needed, the location where needed, and type of work involved and its anticipated duration. The business agent would then read from his lists the names of all applicants available for employment, including both members and

non-members. The record does not show from which list he read first but it does show that all names were read before the Chief Clerk made his selection. Following this reading the Chief Clerk then named the specific individuals he decided to hire, based on his knowledge of their proficiency for the job at hand and their record of dependability. The business agent made no recommendations and named no names.¹

Following the selection, the business agent would inform the individuals of their selection and tell them when and where to report for work. The individual would then report to work to the Chief Clerk. This was the long standing and consistent practice and was so testified to without contradiction by numerous Board and respondent witnesses, (J.A. I, 62, 67, 74, 80, 89, 90, 104, 107, 109, 115, 121, 127, 131, 229, 233, 260, 264, 281, 283, 287), and so found by the Trial Examiner (J.A. I, 258).

When reading from the lists the business agent does not indicate which are members or non-members. The Chief Clerks themselves, however, were, for the most part, members, and sometimes officers or committeemen of the local, and usually could tell from the names read which were Union members. (J.A. I, 330) There was nothing to show, however, that the Chief Clerk was influenced in his decision by this fact, and the trial examiner found that "the

¹ Occasionally the Chief Clerk would ask for a man by name. This practice was unusual because in that event a higher wage payment would be required. Also, occasionally the Chief Clerk would ask the business agent to determine which individuals were qualified but this again was unusual. In those instances where the business agent did make the selection the Trial Examiner found that the evidence did not reveal the basis upon which the selections were made. Accordingly, the Trial Examiner presumed that they were made "in a lawful manner without discriminating between the union and non-union men." The Trial Examiner found that the normal procedure was for the Chief Clerk to select the individual for hiring as indicated above. (J.A. I, 259) As will be seen, the record fully supports this finding and it is not contested by the Board.

evidence adduced does not reveal that membership or non-membership usually plays a part in the selection of individuals for work." (J.A. I, 259)

All clerks and checkers seeking employment through use of the hiring hall, including members and non-members, were asked to and did fill out a form under which the applicant agreed to pay a percentage of his wages to Local 1351 "as compensation for services rendered." In addition the forms designated Local 1351 as the bargaining agent of the individual. (J.A. I, 263) At all times relevant to this proceeding this fee was in the amount of 3 percent of wages obtained, so that on those days or occasions when an applicant was not called for extra work, no fee was paid. In addition the members paid to the local dues of \$1 (One Dollar) a month and an initiation fee in undisclosed amounts plus occasional assessments, also in undisclosed amounts. All these service fees were placed into the union's general fund and co-mingled with other payments made to the union, such as dues, initiation fees and assessments from members. While the record is not clear, it appears that a portion, undisclosed in amount, of the service fee paid by non-members went for the payment of general union expenses as distinguished from expenses for the operation of the hiring hall as such (J.A. I, 279) but for all that appears in the record, this difference might be accounted for in the value of the referral or other services rendered to the non-members by the union.

No Chief Clerk or other company representative, or any union representative testified concerning any discrimination in favor of union members in the selection of applicants for employment; what testimony they gave was to the contrary. A number of non-member applicants testified or offered to testify to the fact that they were *not* discriminated against in their referral in employment. (J.A. II, 292 and 316) *Only one witness*, Vinson, the charging party, testified to any practice of discrimination in referral and that was in the form of vague testimony as to several unspecified instances where on occasion the business agent

would call for an applicant from a sister union's hiring hall although one or more non-members of Local 1351 might still be waiting for a call. (J.A. II, 250) There was no showing that on those occasions the company had requested Vinson or other allegedly passed-over applicants for employment or that they were qualified for a job then available.

There was a showing that for a 6-month period in 1955 the average earnings of union member extras was approximately twice that of non-member extras judging by the amount of a refund of service fees of members and non-members which happened to have been given during that period (J.A. I, 332) There was nothing to show whether this higher earning average, if it existed, was attributable to the fact that union members were more experienced, had greater ability or were more dependable than the non-members, and many company officials testified without contradiction that it was their practice to call for repeat work those extras whom they had found to be more qualified, experienced and dependable. (J.A. II, 104, 115, 122, 233)

The showing in respect to the individual discriminations was as follows. Vinson, a man of over 60 at the time of the hearings, had worked out of the hiring hall as a checker since 1946. His earnings in 1953 totalled some \$3,500, in 1954 some \$2,500 and in 1955 approximately \$1,000. Beginning January 1, 1956, he went to the hiring hall only 3 or 4 times a week instead of daily as in the past but was not called to work during the first 5 months of that year. After being told by a representative of the Board's regional office that he need no longer try to use the hiring hall if he thought it futile, he discontinued going to the hiring hall after July 1, 1956. Vinson had filed one of the original charges in the case that had resulted in settlement. After the settlement he again filed charges on October 6, 1955. On October 8 and 9, 1955, he received a telephone call from an unidentified person who told him he had better stay away from the local or he might get hurt. On October 10 business agent Morrow telephoned Vinson and offered him a job as a timekeeper which Vinson refused on the ground that he

had never kept time. Morrow then told Vinson that if he kept coming to the hall that somebody was going to beat him up and that he was not welcome at the hall. On several occasions in November of 1955 the air was let out of the tires on his automobile when he had it parked near the hiring hall. On May 8, 1956, business agent Morrow telephoned Vinson and told him that if he had not brought this case up, he would have been at work like the other older employees and indicated that he could receive all of the work he could handle if he would disassociate himself from the Labor Board. (J.A. I, 270-272) There was no showing that during any of these periods any company had called for Vinson and that he had then been passed over by the union.

Linnenberg, a man about Vinson's age, similarly used the hiring hall since 1956 to obtain work as an extra checker. From September 1954 to May 1955 Linnenberg left the labor market and was not available for employment. He then started using the hiring hall on May 1 and from then until October 17, 1955, his earnings were \$293 less than the maximum amount he could receive without forfeiting social security benefit payments. In previous years, ever since drawing these benefits, Linnenberg had made it a practice to work only a portion of the year and to earn only enough to permit him to continue drawing the social security payments. Linnenberg, acting on his own, ceased visiting the hiring hall after October 17, 1955. He made no complaint to the union or any employer about failing to get the amount of work which he thought he was entitled to and did not explain why he ceased to visit the hiring hall. (J.A. I, 272-4) The trial examiner found that "age, ability to do agile work and the limitation which Linnenberg set upon the amount of money he wished to earn played a part in Linnenberg's failure to receive more work than he did." (J.A. I, 274)

2. The Proceedings Before the National Labor Relations Board

On the basis of the foregoing facts the Trial Examiner found that the hiring hall was operated in a discriminatory

manner for which both the union and the employers were responsible. He also found that Vinson and Linnenberg had been discriminated against by both the union and the employers because of their non-membership in the union and because they had filed charges with the Board. By way of remedy he recommended that the hiring practices be brought into conformity with the law and that any discrimination be discontinued, but he did not recommend a return of dues or service fees. He further recommended that the employers cease to recognize the union until after the union had received a formal certification from the National Labor Relations Board following an election. (J.A. I, 244, *et seq.*)

On review the Board upheld the Trial Examiner's conclusions as to violations of the Act by the union and the employers but in addition found that the hiring arrangement in and of itself was illegal because it did not contain the so-called "Mountain Pacific" safeguards. By way of remedy, the Board ordered the parties to cease and desist from their alleged unlawful practices and ordered the employer to refrain from recognizing the union until after the Board certification. Vinson and Linnenberg were awarded back pay, and in addition, following its then "Brown-Olds" remedy, the Board ordered the union to return to its members all dues and initiation fees as well as all service fee percentages paid by such members and to return to the non-members all service fee percentages paid by them, the union and the employer to be jointly and severally responsible for such payments. (J.A. I, 328, *et seq.*)

The parties having refused to comply with the Board order, the Board commenced enforcement proceedings in the Court of Appeals for the Fifth Circuit, Case No. 17,996. Before the case could be heard, however, the Supreme Court had decided the *Local 357, International Brotherhood of Teamsters v. NLRB*, 365 U.S. 667 and *Local 60, United Brotherhood of Carpenters v. NLRB*, 365 U.S. 651 cases, and the Board obtained leave from the court to with-

draw its petition for enforcement so it could reconsider the case in light of these decisions. Following such reconsideration but without holding any further hearings and relying on the record that had been made in the original proceeding before the trial examiner, the Board issued its supplemental decision and amended order on October 22, 1962. (J.A. I, 369) In that decision the Board held that even though the hiring practice might not be per se illegal, nevertheless referrals had been made in a discriminatory manner so as to give preference to union members. The Board further found unlawful the requirement that job applicants designate that Local 1351 act as their bargaining representative and pay the union 3 percent of their wages. Finally, the Board affirmed its earlier ruling that Vinson and Linnenberg had been discriminated against because they were not members of the local and because they had filed unfair labor practice charges.

In respect to the remedy of reimbursement, however, the Board held that under the *Local 60* case it could not require a return of dues and initiation fees paid by members. Two members of the Board (Rodgers and Leedom) felt that all applicants, including members, who paid a percentage service fee should be reimbursed for such payments, such payments in themselves tending to encourage non-members to join the union and members to remain as members. Two of the Board members (Fanning and Brown) concluded that since service fees went to support a hiring hall which generally discriminated against non-members in job referrals, the requirement of fee payment was discriminatory as against such non-members. Chairman McCulloch felt that since service fees were paid only as a percentage of actual earnings, any non-member who was discriminated against paid correspondingly lesser fees and thus on the matter of fee payment alone could not be said to be discriminated against. However, he agreed with members Fanning and Brown that non-members be reimbursed for their percentage paid because in this case fees went to maintain the operation of the union as well

as the operation of the hiring hall. Accordingly, and without any attempt to determine what portion, if any, of the service fee went for general union, as distinguished from hiring hall, expenses, or what portion represented payment for the performance of a valuable service, a majority of the Board ordered that all service fees be repaid to all non-members commencing as of the date of the original charges in October of 1954. The Board did not require the employers to cease recognizing the union.

Thereafter, the union filed its petition to review with this Court of Appeals and the Board cross petitioned for enforcement of its order.

STATUTES INVOLVED

The pertinent statutory provisions are Sections 8(a)(1), (2) and (3) and 8(b)(1) (A) and (2) of the Labor Management Relations Act of 1947, as amended, 61 Stat. 136, 29 U.S.C. § 151, *et seq.*, as set forth in the Appendix, *infra*.

STATEMENT OF POINTS

The Board erred in:

1. Concluding that there was substantial evidence in the record as a whole or warrant in law to support the Board's findings that respondent employers violated Sections 8(a)(1), (2) and (3) of the Act and petitioner unions violated Sections 8(b)(1)(A) and (2) of the Act by maintaining a hiring system, practice, or arrangement granting preference in employment to members of petitioner unions, or unlawfully requiring employees or applicants for employment, as a condition of employment, to designate petitioner Local 1351 as their bargaining agent, or unlawfully requiring non-member employees or applicants for employment, as a condition of employment, to pay or agree to pay to Local 1351 a percentage of their earnings derived from such employment.

2. The Board erred in concluding that there was substantial evidence in the record as a whole or warrant in

law to support the Board's finding that petitioner unions violated Sections 8(b)(2) and (1)(A) by causing or attempting to cause respondent employers to discriminate against employees because they were not members of Local 1351 or because they had filed charges with the Board.

3. The Board erred in ordering petitioner unions, whether jointly or severally, to reimburse all present and former employees the percentage of their wages paid to respondent Local 1351 at a time when they were not members of that organization, or in the alternative in not limiting such reimbursements to the portion of such percentages representing the excess, if any, over costs and expenses of maintaining and operating the hiring arrangement and the value of the hiring and other services rendered to such non-members by the union.

ARGUMENT

I.

INTRODUCTION

This case was originally tried by the General Counsel for the Board on a "Mountain Pacific" theory in respect to the alleged illegality of the hiring hall and under a "Brown Olds" theory as to the available remedy—that is, it was assumed under these Board decisions that the system under which clerks and checkers obtained employment through use of the union's hiring hall was invalid because it did not incorporate the three safeguards then deemed by the Board essential to the legality of this practice, and that an appropriate remedy was reimbursement of dues and fees paid to the union by those using the illegal hiring hall. As a result, and because under those theories the Board relied heavily on inferences, the evidence introduced to establish a general discriminatory operation of the hiring hall was, as we will see, very sketchy at best, and the Board having found a violation, imposed its customary Brown Olds remedy, with no attempt to show that the payment of dues or fees was coerced. However, when the United States Supreme Court later repudiated both the

Mountain Pacific and the Brown Olds doctrines in *Teamsters Local 357 v. NLRB*, 365 U.S. 667, and *Local 60, Carpenters*, 365 U.S. 651, and the Board recalled the instant case for reconsideration, it did not, perhaps because it could not, seek to supplement the record, but instead decided the present case upon the evidence introduced at the first or original hearing. This evidence, which we have read and reread and have carefully analyzed, fails completely under the substantial evidence rule to support the Board findings and conclusions (1) that, under the hiring hall, there was a widespread or a blanket or a general practice of discrimination in referral against persons who were not members of the union, or that the union was responsible for any such discrimination; (2) that the union had caused discrimination against Vinson and Linnenberg and, (3) that there was warrant in fact or law for its order requiring the return to all non-members of the amounts paid by them as fees for use of the union hiring hall—a fee payable only when and if employment was actually obtained. On these issues the record is shockingly weak and inadequate, as we shall see.

II.

THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT THE BOARD'S CONCLUSION THAT THE HIRING HALL WAS OPERATED SO AS TO DISCRIMINATE AGAINST NON-MEMBERS, LET ALONE THAT THERE WAS ANY GENERAL PRACTICE OF DISCRIMINATION.

The substantial evidence rule announced by the Supreme Court in the *Universal Camera* case (*Universal Camera Corporation v. N.L.R.B.*, 340 U.S. 474) is simply that "the substantiality of evidence must take into account whatever in the record fairly detracts from its weight. . . . Congress has merely made it clear that on review a court is not barred from setting aside a Board decision when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view." (at p. 488). "Courts must

now assume more responsibility for the reasonableness and fairness of Labor Board decisions than some courts have shown in the past. . . . Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds." (at p. 490).

In *NLRB v. Dan River Mills, Inc.*, 274 F.2d 381 (5th Cir. 1960), the Court applied the substantial evidence rule in respect to findings of discrimination because of non-membership in a union as follows:

"A discharge becomes forbidden only if motivated by an unlawful purpose to discriminate against the union or its adherents. A general bias or a general hostility and interference, whether proved or conceded, does not supply the element of purpose. It must be established with respect to each discharge." (at 384)

The type of "discrimination" required for a finding of illegality under the Act was recently explained by the Second Circuit Court of Appeals in *N.L.R.B. v. Local 294, Teamsters*, 317 F2d 746, 53 LRRM 2248 (2d Cir. 1963):

"a union does not violate Section 8(b) (2) unless the discrimination which the union seeks would constitute a violation of Section 8(a) (3) if the employer acted without union suggestion or compulsion. Section 8(b) (2) is violated only by causing or attempting to cause "an employer to discriminate against an employee in violation of [Section 8(a) (3)]". An employer who discriminates among employees does not violate Section 8(a) (3) unless the discrimination is based upon union membership or other union-connected activities. It is obvious, for example, that the employer's promotion or the demotion of an employee who is a union official is not a violation of the Act unless the discrimination for or against him is based on his union activity. It seems to us to be equally obvious that the union's seeking such a promotion or demotion would not constitute an unfair labor practice if the union's action was based upon the employee's merit or demerit and was unconnected with his union membership or activity. (at 2250)

". . . Union-administered hiring halls do not violate the Act by refusing referral on the ground that others

out of work longer should be referred first (actually a frequent ground for preference) or on the ground that an applicant is "no good" or "a trouble-maker". Referral by the union violates the Act only when there is discrimination based upon union membership or union activity." (at 2251).

Applying these rules to the facts of this case, what do we find? We start with the important consideration that the local union party to these proceedings, a small one of some 100 members, had no previous record of any violation of the Act. Cf., *Local 138, Operating Engineers v. NLRB*, —F2d—, 53 LRRM 2754 (2d Cir. 1963). When following the passage of the complex and confusing Taft-Hartley Act of 1949, certain of the union's traditional referral practices were challenged, rather than litigate the issue, it endeavored voluntarily to conform these practices to the law as it best could understand what the law required, and entered into the settlement agreement. Nevertheless it was again challenged, although then, as now, the union was unaware of precisely what in the daily operation of its referral system could be claimed to be a violation. Following the settlement agreement it had eliminated the clause in its contract which gave preference to union members in employment (clause 2), it had equalized the service fees charged to members and nonmembers for use of the hiring hall, and had consolidated the referral lists, removing them from public display. It did, however, continue its previous practice of reading through the lists of available job applicants, whether members or nonmembers, following which the employers' hiring agent—the chief clerk—would make his selection.² This practice was continued deliberately and in all innocence, the law being, so it was understood, that a system whereby an employer obtains all his employees through the use of a union hiring hall is perfectly valid. (*Local 357, Teamsters, supra*).

What then is the evidence upon which the Board relies to

² This is what was meant by the many witnesses who testified that there was no change in the referral practice following the settlement agreement.

conclude that the hiring hall has been operated generally so as to discriminate in favor of members of the union and against nonmembers? The answer to this question is particularly relevant to the further question, discussed *infra*, at IV, concerning whether there is warrant for the Board's blanket order for return of service fees to the non-members.

A. The Testimony Of Vinson Is Not Sufficient To Support A Finding Of General Discrimination.

The only direct testimony in the entire record which indicates any act or practice of discrimination against non-members is that of one person, Vinson, one of the charging parties. He testified as follows (J.A. II, 248, *et. seq.*):

"A. As soon as C. B. [Morrow, the union business agent] walked into the hall, he got there along about 7:00, the phone would start ringing and he would go there and begin to answer it, then he would tell the different men to go out. Some of them he would call up over the phone. Some of them he would call there in the hall and tell where to go.

Q. And if you weren't sent out, how long would you stay there in the hall?

A. Well, up to January 1, '56 I stayed until around 10:00 o'clock, sometimes a little longer. But in 1956, the days that I went out there, I stayed until he called the men he was going to call there in the hall, and after he started calling the men from the Carloading Hall, the Deep Sea Hall, I didn't stay very long, long about 8:30.

Q. At that point, were all the men used up in the hall or not?

A. Well, there would be some left there in the hall, a few, new ones, that come in there.

Q. Would there be any button men left?

A. No, sir.

Q. Would there be just a few permit men?

A. Yes, a few.

Q. Like Linnenberg?

A. Yes, he was there several times—well, not in 1956, but along in '55 he was there."

The Trial Examiner (J.A. I, 262) credits Vinson's testimony that "in 1955 and up to July 1956 there were occasions when the business agent C. B. Morrow passed over all nonunion men waiting in the hiring hall for assignment and sought men from the Deep Sea Local (1273) and from the Carloaders' Local (1330)." The Trial Examiner further says in footnote 14 (J.A. II, 278) "as noted earlier in this Report Vinson testified that in 1955 (and 1956) there were occasions when Business Agent Morrow passed over him (Vinson) and Linnenberg and sought men from sister locals of Local 1351. The record as a whole infers that this occurred during the latter part of 1955 and there is no affirmative evidence of such conduct prior to then."

If any such passing over took place, there is nothing to show why, or with respect to how many. The record is undisputed that the employers' agent—the chief clerk—does the actual hiring; the union's business agent does not even make suggestions unless asked to do so by the chief clerk. If any passing over did take place, it might well have been because the work which the employer had in mind could not be done by the individuals remaining in the hall, or that for any of a hundred non-discriminatory reasons the employer chose, as was his right, to seek elsewhere for someone he deemed more qualified for the job in question.

As opposed to this, there is actual and proffered testimony by a large group of non-member witnesses that there had never been any discrimination against them because of their lack of membership in the union and they were perfectly satisfied with the operation of the referral system, and there was no complaint concerning the operation of the hiring hall by any of the non-members other than Vinson. This is significant not only in respect to whether there was in fact any discrimination against non-members, but also in respect to the propriety of the Board order that all non-members be returned the service fees they had paid.

There is not a single line of testimony in the entire record that any non-member job applicant was ever even threatened with discrimination because he was not a member of the union, nor is there even any background evidence of general hostility against non-members either by the union or the employers.³

It is submitted that a statement by one of the charging parties that he and a few others were passed over, for undisclosed reasons, during a brief period in 1955 or 1956 in favor of applicants at other hiring halls (whose membership status in the union was not shown in the record) is not sufficient to warrant a finding of general discrimination or of a discriminatory operation of the hiring hall based on lack of union membership, particularly in the face of the testimony of numerous nonmember applicants that there was no discrimination and a complete absence of background hostility or general complaints by non-members.

The 5th Circuit in the *Dan River* case, *supra*, held that a single instance of discrimination testified to by one witness was not sufficient to support a Board finding of general discrimination even where the record showed some hostility. Recently, the 2nd Circuit in the *Local 138 Operating Engineers* case, *supra*, refused to permit testimony of one complaining witness about several isolated instances of alleged discrimination to support a finding of blanket discrimination. See also *NLRB v. Audio, Inc.*, 313 F2d 858 (7th Circuit 1963). In *Local 138, Operating Engineers*, *supra*, the Court found that the fact that only a few job applicants were complaining concerning the operation of the hiring hall and that, as to these, the union had cause

³ As will be seen, the alleged discrimination against Vinson and Linnenberg may arguably permit, if anything, only an inference that it was caused by reason of the charges they had filed against the employer and the union and there is nothing at all which even indicates any such discrimination was caused because Vinson and Linnenberg were not union members. The fact that the union was not interested in pushing Vinson into membership is demonstrated by the Union's continued refusal to admit him as a member. (J.A. II, 253)

to discriminate based on something other than their lack of union membership, was persuasive that there was no general discrimination against non-members.

B. Non-Members Were Not Placed At Bottom Of The Referral List.

The Board in its decision termed the hiring hall in this case a discriminatory one because it "accords non-members the dubious privilege of being assigned to the bottom of the referral list because they lack union membership." (J.A. I, 372) The Board makes this statement, not only in support of its finding of a general discriminatory operation of the hiring hall, but also in support of its requirement that the non-members be returned the full amount of their service fees. The fact is that there is not one word of testimony that any non-member was placed at the bottom of any referral list, and there is no evidence of any kind from which this conclusion could even be inferred. It is true that the record shows that the names of members were placed on one list and the names of non-members on another list. There is nothing in the record, however, to show which list was read first. In any event, it is immaterial which list was read first because the uncontradicted evidence shows that the general practice was for the Business Agent to read through both lists after which the employer, not the union, made the selection. There is no evidence and no suggestion that the lists were not accurate, or that the names of all available persons, union and nonunion, were not placed on the lists. There is unrefuted evidence (J.A. II, 448) that the lists were read in full;⁴ and that the universal practice was for the Business Agent to read the lists and the employer's chief clerk to make a selection is

⁴ General Counsel witness Charles C. Steiner, chief clerk for Strachen Shipping Co. for 12 years testified as follows: "Q. Is there any way for you to know from your end of the telephone whether he's read out completely all of the list? A. I find no reason to doubt the man. He's always called the roll and quite often I have asked him to call it to me again because on the first time I am trying to select out of this group of twelve which one of those twelve men could do my job the best, so I ask him to call it again."

established by the uncontradicted testimony of all the many witnesses who were asked questions concerning the practice. See, for example, J.A. II, 62, 67, 74, 77, 85, 89, 90, 104, 107, 109, 121, 127, 131, 229, 233, 259, 260, 264, 281, 283, 287, 290 and 291. The Trial Examiner found the practice to be as aforesaid. (J.A. I, 258,259).

C. The Fact That The Chief Clerks Were Union Members And Officers Does Not In Itself Establish Discrimination In Selection Of Applicants.

The Board relies heavily on the admitted fact that many of the chief clerks were union members and held either some office in the union or were members of some union committee, and that most of the chief clerks would know from the names read off from the list which were members and which were nonmembers. From this and a clause in the international union constitution which requires giving members preference in employment, the Board infers that such preference was in fact given.

There are several answers to this conclusion. In *NLRB v. News Syndicate*, 365 U.S. 695 (1961), the Supreme Court flatly rejected a Board holding that an exclusive-hiring hall contract was *per se* illegal because it required that hiring foremen be union members. This court has held that the mere fact that the employer's hiring agent or representative was a union member does not permit an inference that in hiring he discriminated in favor of union members; on the contrary, said this Court, the inference must be that he hired applicants without discrimination, and it is only where the record shows actual acts of discrimination that inferences can be drawn from the union membership of foremen or other supervisors who perform a hiring function. We refer particularly to this Court's decision in *Carpenters District Council v. NLRB (Del-Mar Cabinet Co.)*, 274 F2d 564, 107 App. D.C. 55 (D.C. Cir. 1959). The case involved allegations that a union engaged in a secondary boycott. The employer's foreman was a member of the union. The union rules provided that members shall not work on products which do not bear the label of the union. When the union found that such products were being worked on in a certain job they told the foreman not to install the products.

The foreman passed this information on to the carpenters in his crew. The Board found a violation of "inducement of employees" not to work because the foreman had acted as "the medium" for passing the union directive on directly to the employees. The Court reversed, pointing out that the Board's finding was not based on evidence "but rather upon the presumed effect of [the foreman's] obligations as a union member". The Court was of the view that he was an agent of the employer only—

"This view rests upon our analysis of the congressional purpose in enacting §2(3) (and its companion provision, §14(a)) in 1947. Congress was aware of the potential conflict between the obligations of foremen as representatives of their employers, on the one hand, and as union members, on the other. Section 2(3) evidences its intent to make the obligations to the employer paramount. That provision excepts foremen from the protection of the Act. Its purpose was to give the employer a free hand to discharge foremen as a means of ensuring their undivided loyalty, in spite of any union obligations."

This presumption that the employer's hiring agent, even though a union member, hires lawfully and without discrimination has been consistently recognized by this Court in subsequent cases. See *Sheet Metal Workers v. NLRB (Burt Manufacturing Co.)*, 293 F2d 141, 110 App. D.C. 302 (D.C. Cir. 1961); *Brotherhood of Carpenters v. NLRB (Endicott Church Furniture, Inc.)*, 286 F2d 533, 109 App. D.C. 249 (D.C. Cir. 1960). In this latter case, there were two situations involving supervisor members: (a) The foreman was a member of the district council and was the acting superintendent for the general contractor on a job. The district council rules bound this foreman not to work with nonunion employees, and not to permit those he supervised to work with nonunion employees. When the foreman found that nonunion people were on the job, he himself quit the job, and urged other employees to do the same. The Court upheld the Board's finding of an 8(b)(4) violation, distinguishing *Del-Mar, supra*, on the ground that: "In the present case, the Board's finding was not based solely on the presumed effect of the foreman's union duties."

The Court emphasized that the foreman himself quit the job and asked others to do so; (b) A general contractor's superintendent was a member of the union. When informed that nonunion men were on the job, he called the business agent to come and check on it. The Board found that the district council rules governing "foremen" applied to this superintendent and that he felt himself bound by these provisions. The Court said that the Board's finding that the superintendent's first duty was to the union might have been upheld except for the fact that the evidence showed that the employer himself was in favor of the union and apparently desirous of having its rules enforced. Therefore, said the Court, the superintendent's conduct in initiating an inquiry as to the nonunion status of some of the men under him was perfectly consistent with the policy of his employer, and accordingly, there was not substantial evidence to overcome the presumption established in *Del-Mar*.

The fact that the union's constitution or by-laws might have a discriminatory clause likewise is not controlling absent evidence that the clause was specifically invoked. This Court has so indicated in the *Del-Mar Cabinet* case where union rules contained a clause which was unlawful on its face. It was also so held in *NLRB v. Mountain Pacific Chapter, A.G.C.*, 270 F2d 425 (9th Cir. 1959). The *Local 138, Operating Engineers*, case, *supra*, held that reference to union rules, absent a showing of specific discrimination and practice, was insufficient to support a finding of violation of the law. The Court there stated,

"The discharge clause is similarly unlawful, the Board argues, because union rules provide that a member becomes 'ineligible' for reasons other than nonpayment of lawfully exacted fees. For example, the constitution of the International, followed by Local 138, provides that a member may be expelled for subscribing 'to the principles of communism or similar doctrines,' etc. We think that our decision in *National Labor Relations Board v. Revere Metal Art Co.*, 280 F2d 96, 46 LRRM 2121 (2 Cir.) cert denied, 364 U.S. 894 (1960), requires that enforcement of this provision of the

Board's order be denied. We there indicated that the failure to include in a union security agreement an express negation of 'a right of the union to seek the discharge of an employee after union membership had been terminated for reasons other than nonpayment of dues or initiation fees' was not by itself a violation of the act even though the union rules provided for expulsion from the union for such other reasons. *Id.* at 103. We pointed out that 'the safeguard to the employee is postponed until discriminatory action is taken.' *Id.* at 105. The Board has not pointed to any case of an employee who was discharged by his employer for failure to comply with union rules. As to that aspect of the case, *Revere Metal Art, supra*, is controlling. As to the other disputed clauses of the agreement, the Board has not shown or even attempted to show that any of them had been discriminatorily applied. For aught that appears, references to union members in the agreement are simply references, naturally phrased by a union entering into an agreement with an employer, to all employees. And, while we might be tempted, as we were in *Revere Metal Art, supra*, at 103, to construe the act to prohibit 'the creation of a setting in which employees would think discrimination by the employer' was likely to result from non-membership, the Board's proof has not gone even so far as to suggest that such a setting exists apart from pointing to the bare words of the agreement. We will not approve a finding of a violation which is based solely on words in an agreement which lend themselves as easily to a construction consistent with the act as to a construction which, if carried into effect, would result in conduct illegal under the act. Enforcement of this provision of the Board's order is denied."

Finally, and most conclusively, the Trial Examiner in the present case (J.A. I, 259) found as follows:

"Since practically all of the Chief Clerks are members themselves, they are able to, and usually do, recognize the names of members. Nevertheless, the evidence adduced does not reveal that membership or nonmembership usually plays a part in the selection of individuals for work."

Thus, on the basis of this record, the Board can make nothing of the fact that lists of members or nonmembers

were maintained and read to the employer's chief clerk who made the selection or from the fact that the separate lists were kept, or from the fact the chief clerks were union members or officers and knew the other union members; and most assuredly there is nothing in the record to support the Board's conclusion that nonmembers were accorded "the dubious privilege of being assigned to the bottom of the referral list."

D. The Difference In Earnings As Between Members And Non-Members Proves Nothing.

The Board next attempted to bolster its findings that the hiring hall was operated in a manner so as to discriminate against nonunion members by referring (J.A. I, 332) to the union's records that show that during a 6 month period in 1955, during which equal percentage fees were collected from all extras using the hiring hall and later refunded to all, average earnings for union members listed for extra board work was approximately twice that of the non-members, *judging by the amount of the refunds*. No actual earning figures were produced, but even assuming the union members averaged more during this relatively brief period than non-members, the record also shows without contradiction that the employers would re-hire those extras whom its experience had shown were more dependable, more competent or otherwise more qualified for the particular jobs. (See J.A. II, 104, 115, 122 and 233) This testimony is undisputed; thus it would have been perfectly possible that certain extras who happened to be union men were called repeatedly because of the employers' knowledge of their qualifications and not because they were union members. The very fact that extra work was casual and sporadic would tend in the first place to attract applicants who were transitory or footless, and second, to narrow the choice of applicants to those found by experience to be dependable. Certainly it cannot be said that the lesser earnings of the nonunion members was necessarily due to the fact that they were not union members. Here the in-

ferences can be reasonably drawn in either direction, but the burden is on the Board to support its inferences by supporting proof. See *Local 357 Teamsters* case, *supra*. In this connection it is significant to note that at least some employers consistently work more nonunion men than union men. (See typewritten transcript of proceedings, pages 1130-1132).

The Board's decision also noted that the union member extras were usually given the high-paying clerk jobs, whereas nonunion applicants were usually given lower paying checkers jobs. We can find no evidence to support this conclusion, but even if there were, the same considerations of dependability discussed above would indicate that union membership did not play a necessary part in this result. If inferences are to be permitted, a reasonable one would be that the less footloose of the extras were those who desired more permanency in their work and in their community and thus chose to become union members as did the regular clerks and checkers; the drifter would normally be less likely to join the union and settle down.

E. The Alleged Difference In Service Fees Is Inconclusive As To Discrimination.

The Board relies upon the alleged differentiation in service fees as required of the union and nonunion men in terms of the percentage of the costs of operation of the hiring hall paid by each, i.e., the Board reasons that a portion of the service fees of the non-members must have gone to the maintenance of the union as such so that to the extent the non-members do not have the benefit of union membership while paying for the costs of operating the union, they are discriminated against. This subject will be discussed in greater length in Part III of this brief. For the present it is sufficient to note that the Board's figures in this respect are inconclusive (for instance, there is no showing what amount of initiation fees or assessment are paid by union members) and do not take into account the value of the hiring hall services which non-members receive or the benefits which result to them through the efforts

of the union, which must represent them equally with the union members for all purposes of collective bargaining.

F. The Request That Applicants Authorize The Union To Act As Bargaining Representative Does Not Constitute Discrimination Or Violate The Act.

Finally, the Board relies upon the fact that when job applicants first seek to use the hiring hall, they are asked to sign a card which authorizes the union to act as their collective bargaining representative. This, says the Board, is illegal and discriminatory because it interferes with their right freely to choose a bargaining representative. Since the hiring hall is not, *per se*, illegal merely because applicants are obliged to use it in order to obtain employment (*Local 357, Teamsters, supra*), and since the union as the recognized or certified bargaining representative of the employees and party to the existing exclusive recognition agreement with the employers already stands, in law and in fact, as the bargaining representative of all employees, it is difficult to see why acknowledgment of this fact by the job applicant constitutes a violation of the Act or is discriminatory, particularly since the authorization is revokable at will. Certainly this one factor, no matter how viewed, cannot be the basis for a blanket condemnation of the hiring procedure as illegal. If, for reasons which the Board might think important, it desires this practice to cease, the unions are willing to do so as they have in the past, but only by order directed specifically to this one practice.

G. Applicable Decisions.

Four decisions of the Circuit Courts of Appeals, one decided prior to the *Local 60, Carpenters* case and three subsequent thereto are apposite. Three of these cases involved the operation of a hiring hall, and the courts refused to enforce the Board's order of reimbursement of service fees paid by nonmembers, although in each case the circumstances favoring the Board's position were much more compelling than here.

In the most recent decision, that of the 2nd Circuit in *Local 138, Operating Engineers v. NLRB, supra*, Local 138 had entered into a collective bargaining agreement with an association of employers in the construction industry. This agreement provided that the union "shall be the sole and exclusive source of referral of applicants for employment." In the operation of the hiring hall referrals were made so as to seemingly prefer union members with seniority. In addition, non-member applicants, upon first making application for listing in the hiring hall, were obliged to wait for referral until all union members had been called, but once having been referred, they were referred equally with union members. Further, a 90-day delinquency provision respecting the payment of permit fees operated to penalize nonmembers more than members. In addition, the Board found certain other provisions of the agreement, such as the requirement that union members need not be subject to a physical examination in order to be employed, to be discriminatory. Finally, the Board found that four individuals, members of a so-called "Reform Group," were specifically discriminated against in their referral. All but one of these were members of the union. On the basis of the foregoing, the Board found a general or blanket practice of discrimination sufficient to justify an order requiring the union to return to the non-members who used the hiring hall all permit or service fees paid by them. These permit fees were in a flat amount and were equal to the dues of union members.

The court reversed in part and affirmed in part. As set forth earlier in this brief, the court disagreed with the Board's conclusion that the agreement itself was discriminatory. In addition, it reversed the Board's finding of blanket discrimination on the ground that there was no substantial evidence to support such a finding although there may have been evidence to support a finding that there was some discrimination against non-members. It upheld the Board's finding of discrimination against the four individuals largely because the Local had a history of

"persistent violations." Finally, it refused to enforce the Board's order requiring the return of service fees to non-members, and remanded the case to the Board to determine whether the fees were excessive, in which event the excessive portion could be returned. The court admonished the Board, however, to bear in mind that its finding of blanket discrimination had been rejected in determining whether even a return of any excessive amount would be warranted. In determining any excess amount the Board was further told to consider not only the costs to the union of performing the referral service, but also the value to the non-members of the services performed by the union.

We think the decision is a compelling one and its rationale, if adopted here, decisive of the issues discussed in Parts II and IV of this brief. Accordingly, we quote at length from the opinion as follows:

"The Trial Examiner and the Board found that the hiring hall operated by Local 138 did discriminate against non-members, and therefore violated §§ 8(b)(1)(A) and (2) of the act, 29 U.S.C. §158 (b)(1)(A) and (2). Union secretary Verner Sofield, who ran the hiring hall together with another union official who was not called as a witness, testified that the order of referral was determined by seniority. So far as we can understand his testimony, 'Seniority' for this purpose meant the length of time during which the worker had been a union member in good standing or, if he was not a union member, the length of time after he had actually started work on a job to which he was referred by the hiring hall and during which he had paid the permit fees discussed below. If union dues or permit fees became more than ninety days in arrears, the worker lost all seniority theretofore acquired, and did not reacquire it when he again became paid up. The trial examiner concluding that Sofield was 'not entitled to belief on disputed matters' construed his testimony in the worst possible light and concluded that nonmembers were not dispatched 'until the roster of all unemployed and otherwise available union members is exhausted.' The Board apparently agreed with this conclusion.

"We think that the record does not contain substantial evidence to support a finding of such blanket discrimination. There is nothing in Sofield's testimony which can be so construed; disbelief of a witness does not furnish automatic license to assume that the worst is true. In addition, we are impressed by the absence of any suggestion of discrimination against nonmembers other than those referred to below, who were notorious as members of a 'Reform Group', and thus rightly or wrongly placed in a separate category by the union. On the other hand, it is plain that even in its best light, Sofield's testimony evidences some discrimination against nonmembers. A nonmember who, for the first time, filed an out-of-work card and paid his permit fees apparently was not referred for employment until all union members had been referred. Once referred the nonmember did acquire seniority, but he could not get started doing so faster if he joined the union. In addition, the 90-day delinquency provision imposed the financial burden of maintaining permit fees on nonmembers who might not wish to work for a time but who expected to be seeking jobs in the future, lest they lose their seniority already acquired. Although union members also had to keep up their payments, they presumably received benefits in addition to the right to use the hiring hall, while a nonmember who temporarily chose to remain idle would receive nothing in return for his payments.

"We do not say that any system of referral based on seniority is bad, but rather that the system used by Local 138, which resulted in impermissible pressures to join the union, was for that reason bad. The discrimination against nonmembers which is evidenced by the record sufficiently justifies the Board's order, which required the union to cease and desist from 'Maintaining any practice or enforcing any agreement, understanding, or practice with the Building Trades Employers Association and its members or with any other employer over whom the Board would assert jurisdiction, which unlawfully gives members of the local Union preference in job referrals or conditions referral or referral seniority upon good standing in the Union as either a member of the local Union or as a permit man.'

"Accordingly, this portion of the order will be enforced.

"In addition to the above provision, the Board ordered Local 138 to "reimburse all individual nonmembers for permit or service fees unlawfully exacted from them as a condition of referral or employment, with interest thereon at six percent per annum as set forth in the 'Remedy' section of this Decision and Order." The basis for this order was the Board's conclusion that "because the exclusive hiring and referral system was discriminatorily operated, the Respondent could not lawfully exact a fee for its use." Two of the four Board members who sat on the case would have found the assessment of permit fees discriminatory, and therefore unlawful, for the additional reason that they were in an amount equal to the monthly dues paid by union members. In their view, absent proof of a reasonable relationship of the fees charged to the cost of running the hiring hall, the assessment of fees equal to union dues is unlawful.

"We agree that the amount of the permit fees was excessive. The fees were charged solely for the use of the hiring hall. Yet of each \$10.00 monthly payment, \$2.00 was remitted by the local union to the International. While a union might under proper accounting procedures include in the cost of operating a hiring hall some reasonable percentage of the union's general expenses, the union has not argued before us that its charges to nonmembers were based on anything except an intention to exact from them the amount paid by members. This the union could not do under the guise of charging for its services as an employment agency. Compare *National Labor Relations Board v. General Motors Corporation*, 53 LRRM 2313, decided by the Supreme Court on June 3, 1963. While we think it likely, therefore, that some portion of the permit fees exacted since 1958 should be returned to the men who paid them, we think that the Board's order goes too far. We have rejected above the apparent finding of blanket discrimination. And while the limited discrimination which we have found to be supported by the evidence may have reduced in some degree the value of the referral services to nonmembers, the absence of any complaint except those made by members of the Reform Group indicates that some value was received by nonmembers for their fees. We do not have before

us any information as to the number of nonmembers who paid fees or the total amount of money which the union would have to return if the Board's order were enforced as it now reads. But in view of the period of time covered and the possibly large number of men involved, the Board's order might be in the nature of a penalty, which is prohibited. E.g., *Local 60, United Bhd. of Carpenters v. NLRB*, 365 U.S. 651, 655, 47 LRRM 2900 (1961). We deny enforcement of this portion of the Board's order and remand it to the Board for further findings. The Board should consider on remand what proportion of the fees which were paid were reasonably related to the value of the services provided by the union, having in mind also the cost to the union of performing such services. Any excess over that amount could properly be ordered returned to the men who paid it." [2] "The Board will, of course, have in mind our rejection of the finding of blanket discrimination in determining whether such an order is warranted."']

Another recent case in point is that of *Hod Carriers v. N.L.R.B. (Fenix and Scisson, Inc.)*, 289 F.2d 492 (6th Cir. 1961). In that case, the hiring hall was being operated by the union without the "Mountain Pacific" standards. The Board found that the hiring hall was being operated discriminatorily, and also found that one individual had been specifically discriminated against because he was not a member. The court found insufficient evidence of general discrimination to justify the order demanding reimbursement of dues and fees, although it affirmed the substantive portions of the Board's order. That court took similar action in the case of *NLRB v. Argo Steel Construction Co.*, 289 F.2d 491 (6th Cir. 1961).

The reasoning of the 3rd circuit in the case of *NLRB v. Food Fair Stores*, 307 F.2d 20 (1962), is also applicable here. There, union members, employees of Food Fair, voted an assessment of \$15 to support a strike of another chain of stores. Both the union and the Food Fair threatened employees with discharge if they didn't pay the assessment through the "check-off". Payments were collected. The

Board found 8(a)(3), 8(b)(2) violations and ordered reimbursement of all employees for the assessment.

The court upheld the merits of the order. In respect to reimbursement, however, it held as follows: Those who had signed previous check-off authorizations as to "membership dues, initiation fees and assessments" or as to "membership dues" only [under §302 of Taft-Hartley "assessments" are part of "membership dues"—per Justice Department ruling] are not entitled to reimbursement; but those whose authorizations were limited to dues of specified amounts are entitled to reimbursement. "The threats constituting the violations of Sections 8(a)(3) and 8(b)(2) were independent of the voluntary authorizations," said the court. After stating that the threats can be remedied by cease and desist orders on pain of contempt, the court went on to say: "However, the restitution of the assessment to employees who had voluntarily authorized the check-off would return to them that which they had validly authorized to be deducted."

The rationale applied by the 9th Circuit in a pre-*Local 60* reversal of a Board order, requiring a return of work permit fees to non-union workers, is relevant here. In that case (*Operating Engineers v. NLRB*, 237 F2d 670 (9th Cir. 1956)) the Board had found that the union acted illegally by a general discriminatory operation of the hiring hall and by discrimination against a certain employee (Holderby) in not giving him his fair share of job referrals because of his expulsion from the union. The court found insufficient evidence as to the former finding, but upheld the latter finding. Under this hiring hall there was a priority system for referrals with higher priority to those recently laid off by AGC members. Second choice went to those who had been employed by AGC members in the union's area jurisdiction for the last 10 years, and the last priority to workmen whose names were entered on the lists in the area. The union had two lists—one for "members" and the second for "applicants and others." The dispatcher would first look to the members list for workmen. Those dispatched

from the second list were required to pay a permit fee of \$2.50 per week under the union's constitution, which was not incorporated into the contract. The trial examiner dismissed the complaint. The Board found as above stated, and determined that as a matter of practice union members were given job preferences, citing Holderby as an example. It also found the permit fees to be discriminatory. In reversing, the court said:

"We have reviewed the Board's findings to determine whether there is substantial evidence to support them, and in so doing consider not only that which supports, but also whatever in the record fairly detracts from its weight. The scope of our review includes the findings of the trial examiner, since it is part of the record, and deserves some weight because of his opportunity to have observed the demeanor of the witnesses . . . thus viewing the entire record we find no support for the Board's findings of unfair labor practices alleged to have been committed by the labor union, with the exception of acts of discrimination against Holderby." (at page 673).

"There was no evidence of a scheme or practice of discrimination by the union. The only instance of that kind shown was that of Holderby, and a single isolated instance of this type cannot support a cease and desist order." (at p. 674).

That membership application was required within 30 days—a matter of convenience for the union—did not show the necessary discrimination. "There is no evidence in the record with respect to the work permit fees being required of nonunion workers, except that such a provision is contained in the Constitution . . . [This] does not establish, first, that Local 12 was requiring such fees and, second, that said fees were not a reasonable charge for operating the dispatching system . . ."

As far as we are aware, in only one case since the decision of the Supreme Court in the *Local 60* case has a Board

order requiring the return of fees paid by nonmembers for use of a hiring hall been upheld. That case was *NLRB v. Teamsters Hawaii Local 996*, 313 F2d 655 (9th Cir. 1963). The employer, Fox, had contracted with Local 996 to supply Fox with employees. Local 996 had a dispute with another employer, Nilson. The Local told Nilson employees that they could work on the Fox job only if they were members and paid an initiation fee of \$50 (the \$50 initiation fee was double the regular fee), dues of \$5 per month and assessment of 10 percent of wages. The Local distributed cards and twenty-eight employees signed cards. Some got jobs with Fox through the local hiring hall. Then the Teamsters lost the election at Nilson; no employee voted for the Teamsters. The Local vice-president, also a foreman for Fox, then discharged from the Fox job the Nilson employees who had obtained jobs there; he explained that they were not in good standing.

The Board found 8(b)(1)(A) and (2) violations and ordered reimbursement of all money "unlawfully exacted", including all initiation fees, dues and assessments paid to the Local by any person on the Fox job who was not, before getting that job, a Local member. As to those already members, they were reimbursed only the 10 percent assessment.

In upholding the Board, the court distinguished the *Local 60* case on the ground that there all the employees were already members, and the employees here had signed up because of the Local's direct representation that they had to join to get work with Fox. Their vote at the Nilson election showed that not one of them wanted to join voluntarily. Their discharge after the election proved the Local's power to carry out its representations.

Thus, there was a showing of coercion as to each of the non-members involved. The *Local 996* case is not this one. There, the payments were clearly coerced and discrimination was indeed blanket discrimination.

III.

**THERE IS NO WARRANT IN THE RECORD OR IN THE
LAW FOR THE BOARD'S ORDER REQUIRING THAT NON-
MEMBERS BE RETURNED THE AMOUNTS PAID BY THEM
AS FEES FOR USE OF THE HIRING HALL.**

The members of the Board, but for different reasons, have directed that the union and the employers jointly or severally return to all non-members all service fees paid by them. The Board members were unanimous in holding that the union could charge members or non-members a reasonable referral fee consisting of a percentage of wages, but decided this requirement unlawful in the present case for the following various reasons: Members Rogers and Leedom would order return of the fees to members and non-members alike because the hiring hall had been operated discriminatorily in practice, and thus would tend to encourage non-members to join and members to remain. Members Fanning and Brown would restrict the return of the fees to the non-members on the ground that they generally were discriminated against and hence entitled to reimbursement. Chairman McCulloch disagreed with the theory of return advanced by his fellow members, pointing out that since the fee was only a percentage of actual earnings, no discrimination could result to a non-union employee in any amount of fee paid because, to the extent to which he was discriminated against in referral, his payments would be so much the less. However, the Chairman nevertheless agreed to the return of the total service fee to non-members for the reason that in his view the record indicated that a portion of the service fee paid by non-members went to defray part of the union's general, as distinguished from its hiring hall, expenses.

Neither the facts nor the law justifies the return of the service fees in this case to the non-members on any of these theories. In the case of *Carpenters Local 60 v. NLRB*, 365 U.S. 651, the Supreme Court of the United States affirmed what this Court had already held in the *Local 357* case, (*Local 357 Teamsters v. NLRB*, 275 F2d 646, 107 App. D.C.

188) that evidence of actual coercion in payment of dues or fees was necessary to justify a blanket reimbursement order. In the *Local 60* case, the Court made it clear that payments made to a union by job applicants using an illegal hiring hall, *whether such payments were in the form of "dues, non-membership dues, or work fees,"* could be refunded under Board order only where the paying of the fee was coerced by something other than the mere fact that the applicant had to use the hiring hall to get a job. Specifically it must be shown to have been coerced by an unfair labor practice directed against such applicants. In addition, the Court found that there was no evidence in the case that the union had coerced a single employee to join the union ranks or that even a single person joined the union for the purpose of obtaining work on the project. "Where no membership in the union was shown to be influenced or compelled by reason of an unfair practice, no consequences of any violation are removed" by an order of reimbursement. Thus, said the Court, any repayment smacks of a penalty which the Board is forbidden to impose. Repayment can be ordered only where it operates to dissipate the effects of specifically prohibited unfair labor practices.

Justice Harlan, elaborating on the majority opinion in a separate concurring opinion, held that the Board's sole function is "to take measures designed to recreate the conditions and relationships that would have been had there been no unfair labor practice". (at 657) Further, no reimbursement, even though otherwise proper, can operate to "more than compensate the employee". (at 658) The remedy must always be a reasonable attempt "to put aright matters that the unfair labor practice set awry" (at 658). That the reimbursement order would have a deterring effect is not "in itself a sufficiently justifying effect of a Board order". Justice Harlan concluded his concurring opinion by commenting that "where it is unlikely that a substantial number of employees were unwilling to pay" the fee in question there could be no rational relationship between the amount paid and the value to an individual of the right to change

his mind (at 659). In short, said the Court, it must be shown that the employees were unwilling either to pay the union dues or pay the service fee; to remove the vice of penalty or over-compensation the Board must show by the evidence that the dues or fees were paid only because they were coerced by an unfair labor practice, specifically the unfair labor practice of discrimination because of lack of union membership.⁵

In this case, *there is no showing that even one job applicant, even Vincent or Linnenberg, was coerced into paying the service fee because of his lack of union membership.* On the record in this case no one can say that the general operation of the hiring hall was such, or that examples of discrimination against non-members were such, as to coerce or induce or encourage non-members to pay the fees, let alone to become members. The *Local 60* case establishes that the mere fact that the applicant was required to use the union hall to get a job does not constitute such coercion. In the *Local 60* case for instance there were two specific examples of actual discrimination as well as a finding of general discrimination in the operation of the hiring hall, and yet the Supreme Court did not consider this sufficient to warrant a reimbursement order. It should be noted that this record contains affirmative testimony and offers of testimony by many non-member applicants that there had been no discrimination against them in referral, as against only Vinson's complaint that there had been discrimination.

Lacking evidence of specific coercion in the payment of service fees by the non-members, the Board turns for support of its fees-return order to a supposed blanket coercion through a practice of wholesale discrimination—that can be the only meaning of its remark that the non-member applicant has the dubious privilege of being placed at the

⁵ *Radio Officers Union v. NLRB*, 347 U.S. 17 at 42 held that "only such discrimination as encourages or discourages membership in a labor organization is proscribed" under the Act; discrimination in employment as such is not outlawed. *Cf.*, *NLRB v. Local 294, Teamsters*, 317 F2d 746, 53 LRRM 2248 (2d Cir. 1963).

bottom of the referral list. But we have seen earlier in Part II that this remark is in no way justified by the record; non-members were not assigned to the bottom of any referral list, but had their names read along with the names of members before the employer made his selection. Nor, as we have seen, is there any evidence in this case that warrants a finding of blanket or wholesale discrimination, or even of a general practice of discrimination, because of union membership or lack of union membership. Even if the findings respecting Vinson and Linnenberg are upheld these are only two out of many. In the *Local 357, Teamsters*, case this Court did not consider the one act of discrimination which it found to exist sufficient to justify a general order of returning union dues. In the *Local 60, Carpenters*, case the Supreme Court did not regard the discrimination practiced against two of the employees to be sufficient to justify the broad order in that case, nor did the Supreme Court regard the Board's finding of a general discriminatory operation of the hiring hall to be sufficient. And the Court made no distinction (because there is none, in terms of whether payment is voluntary or coerced) between the payment of dues for the use of a hiring hall by a union member and the payment of a service fee for such use by an employee who is not a union member.

From the foregoing discussion and the foregoing cases, it is plain that the rationale of Board members Rogers, Leedom, Fanning and Brown finds no support either in the record or in the law. There is no evidence that the individual non-members who paid the service fee did so because of any coercion, through the unfair labor practice of discrimination because of lack of union membership, specifically directed against any of them. Neither does the record disclose any such wholesale or blanket discrimination because of nonmembership which might supply the element of compulsion required by the *Local 60* case. On the contrary, the affirmative evidence of a representative group of nonmembers is that they paid voluntarily and received a valuable hiring service without discrimination against any of them. Furthermore, in this case, unlike most hiring

hall cases, the service fee required was not a flat fee, equivalent to dues, but instead was a contingent fee payable only if and when a hiring service was in fact performed and the applicant was employed, the fee taking the form of a percentage of wages received when as a result of the referral a job was obtained. Obviously, then, any return of these fees in the circumstances of this case would "more than compensate" rather than simply put "aright matters that had been set awry," and could not be said to remove the consequences or dissipate the effects of any unfair labor practice as required under the *Local 60* decision. The return of the service fees to the nonmembers in this case in disregard of the value received and in spite of the complete lack of showing that they were other than voluntary would not only be to grant a windfall, but also to inflict a penalty which could destroy the union and would certainly cause its bankruptcy.

Long before the Supreme Court decision in the *Local 60* case, it had described the Board's remedial powers under the Act as being simply to remedy, not to punish or prevent. In *Republic Steel Corp. v. NLRB*, 311 U.S. 7, the Court said:

"The LMRA is essentially remedial. It does not carry a penal program declaring the described unfair labor practices to be crimes. The Act does not prescribe penalties or fines in vindication of public rights or provide indemnity against community losses as distinguished from the protection and compensation of employees." (at 10)

"We do not think that Congress intended to vest in the Board a virtually unlimited discretion to devise punitive measures and thus to prescribe penalties or fines which the Board may think would effectuate the policies of the Act.

"It is not enough to justify the Board's requirements to say that they would have the effect of deterring persons from violating the Act." (311 U.S. at 11, 12)

There remains for discussion the position taken by the Chairman of the Board that a return of all fees is warranted because an undisclosed portion of them went to the

union's general operating expenses as distinguished from the expenses for operating the hiring hall. None of the other members concurred in this reasoning, and it is indeed difficult to follow, even assuming that there is evidence to show that the fees were in excess of the cost of the hiring hall or, if so, in what amount.

In ordering a blanket return of all fees the Chairman takes no account of the repeated admonitions of the Supreme Court that any Board-ordered payment of whatever nature cannot "more than compensate." Indeed, in one case, (*7-Up Bottling Co. v. NLRB*, 344 U.S. 344) the Supreme Court went so far as to set aside a customary back pay award that did not take into account seasonal employment. Since clearly the nonmembers received something of value for their payments, there is no possible theory on which the Chairman's recommendation could be followed, and we know of no decision of any Circuit Court of Appeals which would support an award based on the Chairman's premise. It must be remembered that the value which non-members received represented (1) a proportionate share of the cost of operation of the referral service or hiring hall, (2) the value of the services provided by the union and (3) the benefits provided the nonunion members through the exercise of the union's function as collective bargaining representative for all employees. This would include the reasonable costs of collective bargaining and administration of the agreement, all lawful charges. See *NLRB v. General Motors Corp.*, 10 L ed 2d 670 (1963).

In the *Local 357* case the Supreme Court noted that the Board itself had recognized "that the hiring hall came into being 'to eliminate wasteful, time consuming and repetitive scouting for jobs, and haphazardous uneconomical searches of employers'." It further noted that Congress may well have thought that the hiring hall in fact "has served well both labor and management—particularly in the maritime field and in the building and construction industry." Other writers, knowledgeable in the field have noted the economic value of the hiring halls both as to job applicants and em-

players. See, for example, Goldberg, "The Maritime Story," 1958, pages 277-282. The Board neither here nor elsewhere has suggested to the contrary, but rather in this case has specifically stated that the requirement of a service fee is legal and proper as a means of contributing to the expense of the operation of the hiring hall and as payment for a service received. (J.A. I, 373, fn. 10).

Thus, even if there were to be a remedy of reimbursement the above factors would have to be taken into account in determining any excess in the service fees. Under no theory could the return of the entire fee to all non-members be justified, even with respect to non-members who, it might somehow be said, were coerced by unfair labor practices into the payment of the fee, for in all events any return which included something for which a consideration had been received would "more than compensate" and constitute both a windfall and penalty which the Board has no power to bestow.

Further, the record is not at all clear as to whether there was any excess. The record does not disclose the amount of the initiation fee and assessments paid by union members. The record does not disclose the value of the hiring services received or even the actual costs of operating the hiring hall. Finally, the record does not disclose what benefits other than referrals accrued to the nonmembers because of the union's function as their collective bargaining agent.

The upshot of the lengthy struggle of the courts to limit the Board to its prescribed remedial powers is that the Board may not escape the proscription of the generally accepted rule that "only actual losses should be made good." *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 198. Even before the decision of the United States Supreme Court in the *Local 60* case, the Board had been repeatedly rebuffed by the various circuit courts of appeal whenever it attempted to direct repayment of dues or fees which in any way amounted to a windfall or was punitive. See Annota-

tion in 6 Lawyers Edition 2d 1274. Damages are not recoverable unless they are "the certain result of the wrong" and are "definitely attributable to the wrong." *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 562. The order of the Board can irradicate "a consequence of the unfair labor practices found by the Board" but can go no further. *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 236. "Certainty in the fact of damage is essential." *Palmer v. Connecticut P & L Co.*, 311 U.S. 544, 561. Unless and until the Board comes to accept these fundamental and long established precepts of the common and statutory law, the remedial provisions of the National Labor Relations Act will be given an over-compensatory and punitive scope which Congress had never intended.

IV.

THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT THE BOARD'S FINDING THAT VINSON AND LINNENBERG WERE DISCRIMINATED AGAINST IN REFERRALS OR THAT THE UNION CAUSED THE EMPLOYER TO SO DISCRIMINATE.

The Board found that the union had caused the employers to discriminate against Vinson and Linnenberg because they were not union members and because they had filed charges of unfair labor practice against members of the union. There is nothing in the record to even suggest that Vincent and Linnenberg were discriminated against because of their lack of union membership. Indeed, as we have seen, Vinson was repeatedly rejected from membership. Neither the Board nor the trial examiner indicated in what manner lack of membership in the union might have contributed to any discrimination against either Vinson or Linnenberg. The complete lack of showing that union membership or the absence of it was a factor in any inability of Vinson and Linnenberg to obtain employment, taken together with the absence of a showing of non-member hostility or discrimination in general as discussed above lead to the conclusions (1) that their cases did not support any finding of a general practice of discrimination against

non-members, and (2) that there was no specific discrimination against either of these individuals based on the fact that they were not union members.

There is evidence, however, to indicate that at least the union's business agent, Morrow, was upset and disturbed by Vinson and Linnenberg because they had filed charges with the NLRB, but again as we have seen, the mere showing of general hostility is not enough. See *Dan River, supra*. Something more specific is necessary and the record is lacking in anything except a showing of a gradual decline in employment, culminating in the failure of either to be called for a couple of months, following which both refrained from use of the hiring hall. The trial examiner found (J.A. I, 274) that the filing of charges by Vinson and Linnenberg played a part in their failure to receive more work than they did, but he additionally found that "the record also suggests that age, ability to do agile work, and the limitation which Linnenberg set upon the amount of money he wished to earn played a part in Linnenberg's failure to receive more work than he did." Further, it was found by the trial examiner (J.A. I, 273) that Linnenberg, unlike Vinson, never complained to the union or the employer "about his failure to get the amount of work which he thought he ought to get, and did not explain to respondents why he ceased visiting the hiring hall." There was no evidence to show that any particular jobs which Vinson and Linnenberg were qualified to perform during the period when their work dropped off were available. The record is clear that both Vinson and Linnenberg were elderly and were unable to do certain types of checking work. The record (J.A. II, 90) indicates that Vinson usually handled coffee shipments and that one possible reason for the decline in his employment was that the firm that usually hired him to do this work ceased handling coffee. There is direct testimony (J.A. II, 100) by the chief clerk, whom Vinson and Linnenberg apparently looked to for their previous employment, as follows: "I never have refused to hire them for any reason outside of possibly in my own

opinion they were not capable of handling the job that they were required to do at a specific time." This chief clerk further testified as follows (Transcript of testimony):

"Q. How old a man do you think Mr. Vinson is or do you know how old he is?

A. Well, he is the other side of forty.

Q. Sir?

A. He is on the wrong side of forty, on the wrong side of forty-five, and I think a man working down in the hold has got to be a young man to avoid—to be able to protect himself from the hazards of the job.

Q. Now, is that the only reason you didn't use Vinson any more often than you did?

A. Not only Vinson but I don't employ any old men on those jobs, no old men.

Q. Well, what has been your experience with Mr. Linnenberg?

A. I would say it was about parallel. Mr. Linnenberg is a good man. He does good work but the fact that he is limited to three and a half days eliminated him from the biggest percentage of jobs I had, and the fact of his age eliminated him from those one or two day jobs working down in the hold.

Q. Could either Mr. Linnenberg or Mr. Vinson do the work that any of the other twenty-nine men did?

A. * * * If there was some foul-up of some kind and something was wrong, it's the obligation of the man on the dock to proceed down to the hold to correct whatever is wrong, and I don't believe that Mr. Linnenberg should be permitted to go down in the hold of that ship."

However, regardless of what can be inferred from the admitted fact that Vinson and Linnenberg did receive less employment after they filed charges, there is nothing anywhere in the record to show on what basis the Board could conclude as it did that the union caused the employer to discriminate against Vinson and Linnenberg. The record, as we have seen, is replete with uncontradicted testimony

that it is the company's chief clerk and not the union's business agent who selects the applicant for employment. Indeed, in the case of Vinson and Linnenberg the record shows (J.A. II, 90-91) that they were ordered from the hall by name, that is, when the chief clerk desired their services he would ask for them by name. We have demonstrated earlier that there is no testimony or evidence of any kind which shows any coercion or even influence by the business agent in the selection of the applicant by the chief clerk. As we have seen in Part II, *supra*, under this Court's decision in *Del-Mar*, the presumption must be that the selections were made in a lawful manner even though the chief clerks may have been union members or officers, and even though they knew who among the applicants were members and non-members. Accordingly, the Board's finding that the union caused the employers to discriminate is a bare conclusion based upon unwarranted presumptions and lacking not only substantial, but any evidence in the record as a whole to support it, other than the business agent's conjecture that their failure to be called might be due to their embroiling their employer in Labor Board proceedings. Since the union's violation of law as to Vinson and Linnenberg is predicated upon their alleged action in "causing" the employer to discriminate against them, the Board's order in this respect, at least as to the union, must be reversed. The only positive testimony in the record is that Vinson and Linnenberg were not requested for employment because there were no jobs which, at their age, they could properly fill. This affirmative testimony cannot be overcome by conjecture and inference under the substantial evidence rule.

CONCLUSION

It is respectfully submitted, for the reasons set forth in this brief, that the Decision and Order of the Board should be set aside.

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APPENDIX**LABOR MANAGEMENT RELATIONS ACT, AS AMENDED
UNFAIR LABOR PRACTICES**

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3).

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made and (ii) unless following an election held as provided in section 9 (e) within one

year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: Provided further, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

Sec. 8. (b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.



REPLY BRIEF FOR PETITIONERS IN NO. 17,521

IN THE

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,521

LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS,
INTERNATIONAL LONGSHOREMEN'S ASSOCIA-
TION AFL-CIO, INTERNATIONAL LONGSHORE-
MEN'S ASSOCIATION, AFL-CIO, AND C. B.
MORROW, B.A. OF LOCAL 1351,

Petitioners,

v.

United States Court of Appeals
for the District of Columbia Circuit

NATIONAL LABOR RELATIONS BOARD,

Respondent.

FILED SEP 20 1963

No. 17,631

Nathan J. Paulson
CLERK

NATIONAL LABOR RELATIONS BOARD,

Petitioner.

v.

HOUSTON MARITIME ASSOCIATION, INC.
MASTER STEVEDORES ASSOCIATION OF TEXAS
AND THE INDIVIDUAL RESPONDENT COMPANIES
WHO ARE MEMBERS OF THOSE ASSOCIATIONS,

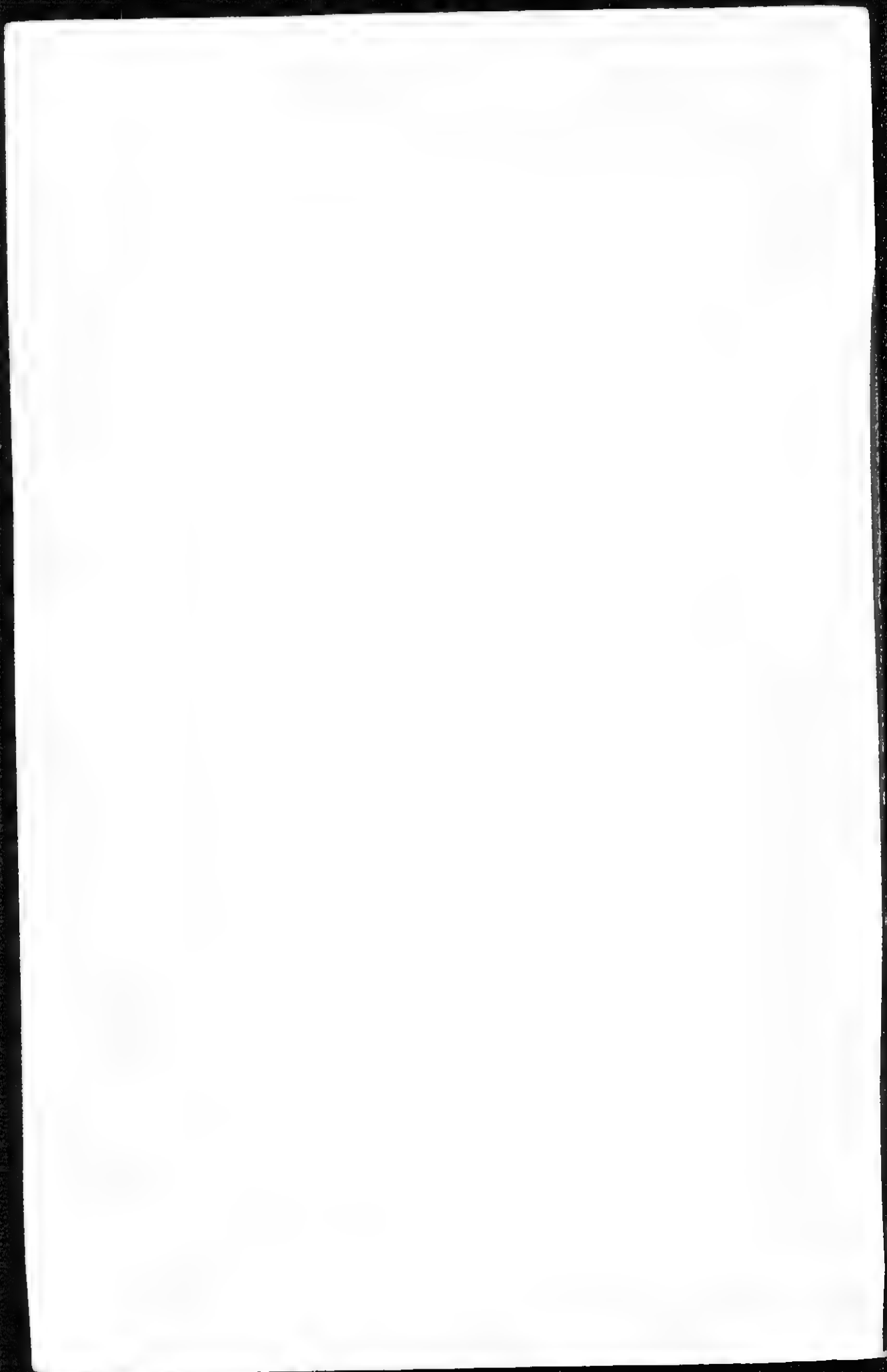
Respondents.

**ON PETITION TO REVIEW AND SET ASIDE
AN ORDER OF THE NATIONAL LABOR RELATIONS
BOARD**

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IN THE

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,521

LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS,
INTERNATIONAL LONGSHOREMEN'S ASSOCIA-
TION, AFL-CIO, INTERNATIONAL LONGSHORE-
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MORROW, B.A. OF LOCAL 1351,

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NATIONAL LABOR RELATIONS BOARD,

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No. 17,631

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HOUSTON MARITIME ASSOCIATION, INC.,
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REPLY BRIEF FOR PETITIONERS

I

The Board in its brief, as in its decision, again relies on inferences, speculation and conjecture to find that the Local 1351 referral system was operated illegally so as to discriminate against job applicants because they were not

union members. The only direct testimony—that of one witness, Vinson—proves, if anything, possible discrimination based on factors other than union membership or lack of it. The Board is left then primarily with whatever inference can be drawn from a supposed lower earning average of the non-member applicants as compared to the member applicants computed during a 6-month period from April to November, 1955. But no inference of illegality is permissible from this alone; as seen in our principal brief, any difference in earnings may as reasonably be attributed to a hundred other factors, and the Board has not attempted to assume its burden of proving that the difference was in fact due to the applicant's non-member status.

Beyond all this, however, is the complete failure of the Board in its brief to answer petitioner's argument that it was the employer's representative—its chief clerk—and not the union representative who selected and hired the applicant, and there is absolutely nothing in the record to show that any of these supervisors were in fact motivated in making their selection by a desire to favor the union members, and the trial examiner specifically so found. (J.A. I, 259). As noted in our principal brief, this court has repeatedly held that an inference of unlawful hiring cannot be attributed to an employer's hiring agents merely because they are members of a union even though the constitution of that union may contain a clause creating a possible conflict in duties as between their employer and their union. Some specific act of discrimination or threat thereof must be shown before such inferences can be drawn. It is submitted that the Board's brief utterly fails to show that the record contains substantial evidence that referrals were made so as deliberately to discriminate against non-member applicants. The fact that over the years only two of them

complained of the practice, and this only in respect to the amount of the fee, is significant.

II

Even if there is evidence to support a conclusion of discrimination against non-members in the operation of the hiring hall, there is certainly no evidence to warrant a blanket return to all non-members of all service fees under the principles set forth by the Supreme Court in the *Local 60* case (*Local 60, Carpenters v. NLRB*, 365 U. S. 651). The Board's brief offers no showing of involuntary or coerced payments of the fees and distinguishes *Local 60* only on the basis of an alleged difference between permissible inferences that can be drawn between the willingness of employees to become and remain members of a union and the willingness of employees to make use of a hiring hall. In *Local 60*, the Court found that unions are useful and necessary institutions which it cannot be presumed employees will join and pay dues to involuntarily. In the *Local 357* case (*Local 357, Teamsters v. NLRB*, 365 U.S. 667), the Court similarly found that the union-operated hiring hall was a necessary and useful institution serving a beneficial purpose for both the employers and the employees. It cannot then be assumed that employees will utilize the services of a hiring hall and pay a fee therefor reluctantly or involuntarily any more than it can be assumed they will join a union only against their will. Indeed, the Supreme Court in the *Local 60* case recognized that there is no difference in principle between the requiring of dues of a union member and a fee from a non-union member because the Court's decision and rationale was expressly made applicable to "dues, non-membership dues, assessments and work permits fees, all of which the

Court noted were collected as "the price employees paid in order to obtain or retain their jobs." Thus, the fact, continually referred to by the Board in its brief, that the employees were obliged to use the hall in order to get a job cannot in itself afford the necessary coercion or else the *Local 60* and the *Local 357* cases could not have concluded that a union-operated hiring hall was valid even though an exclusive source of employment. Yet, in the present case, although the Board concedes (footnote 10 of decision, JA I, 373) that the requirement of the payment of a fee for use of a union hiring hall is valid, nevertheless attempts to draw the same broad inference of the forced payment of such fee that it had made in respect to the payment of dues by union members previous to the decision of the Supreme Court in the *Local 60* case, and this in spite of an affirmative showing by all but two applicants that they have no complaint with the operation of the referral service.

III

The Board complains about the impossible administrative burden it will be put to if it is required in a case such as the present one to prove, as required by *Local 60*, that the job applicants were coerced into using the hiring hall by some unfair labor practice. One would expect an equal concern with the impossible financial burden put upon a union with no previous record of violations of the National Labor Relations Act and which was attempting in all good faith to conduct its affairs in what it thought to be a legal manner, but which, upon the inconclusive testimony of one witness together with broadly drawn inferences, now finds itself faced with bankruptcy. However, be that as it may, the court decisions since the *Local 60* case, and particularly the recent decision of the Second Circuit in the *Local 138*,

Operating Engineers v. NLRB case, —F. 2d—, 53 LRRM 2754 (2d Cir. 1963), indicates that the Board's burden may not be as difficult as it imagines. It is not necessary for the Board to show actual coercion as to each of the individual applicants involved but only a practice of discrimination sufficiently widespread so as to warrant a finding of blanket discrimination, in which case refunds could properly be ordered. As we have seen in our principal brief, there is no such blanket discrimination here, but certainly, if the Board is not to act punitively, it should at least be required to demonstrate a general practice of actual discrimination before all service fees be refunded to non-complaining applicants all of whom paid the fee only after a job was actually obtained.

IV

If this court determines that there is sufficient showing of general discrimination to warrant a requirement that service fees be paid at all, and if the court determines that some refund of service fees is warranted, but not so as to provide a windfall or over-compensate, we suggest the following factors be taken into consideration.

A. The union's principal function was maintaining and operating the hiring hall and the costs thereof were considerable. In addition, as before indicated, no fees were paid unless a service was performed, the fee constituting a percentage of wages actually earned for work obtained through use of the hiring hall. Accordingly, not only the costs of the operation of the hiring hall should be considered, but also the value of the hiring service to applicants. The *Local 138* case is express authority for this requirement.

B. Since, as affirmed by the recent decision in the United States Supreme Court in the case of *NLRB v. General Motors Corp.*, 10 Led 2d 670 (1963) a union can charge a reasonable fee to non-members for reasonable costs of union services in representation and collective bargaining, these costs, as distinguished from the cost of the non-collective bargaining activities of the union, should be included.

Unless the above factors are considered in determining any monies returnable, the job applicants who, for all the record shows, voluntarily used the union not only to obtain a job but to protect and advance their wages and working conditions, would surely obtain the windfall which the United States Supreme Court in the *Local 60* case said it is no function of the Board to bestow and the Board would do more than "recreate the conditions and relationships there would have been had there been no unfair labor practice."

V

The cases cited by the Board in support of its reimbursement remedy are all easily distinguishable from the present one, both on their facts and because most were decided prior to April 16, 1961, when the Supreme Court decided the *Local 60* case. *Dixie Bedding Mfg. Co. v. NLRB*, 268 F. 2d 901 (C.A. 5), decided June 30, 1959, involved a situation where the employer had paid the initiation fees and dues to the union in order to induce its employees to join an employer-favored union which the employer had recognized and bargained with and with which it had entered into an illegal shop agreement although the union did not represent a majority of the employer's employees. It then deducted these fees and dues

from the wages of the employees. *NLRB v. Revere Metal Art Co.*, 280 F. 2d 96 (C.A. 2), cert. denied 364 U. S. 894, decided May 6, 1960, involved a similar situation where the employer had unlawfully assisted and recognized a minority union and dues were obtained through an unlawful union security clause. In the case of *NLRB v. Marcus Trucking Co.*, 286 F. 2d 583, 595 (C.A. 2) decided Jan. 26, 1961, the employer had entered into a contract with a second union at a time when an incumbent union had bargaining rights. The second union then negotiated an overtime pay requirement out of the contract. The Board ordered that the employees be made whole for the subsequent elimination of overtime pay under the invalid contract and also ordered the return of dues paid to the second union but only to the members who had also continued to pay dues to the incumbent union. The *NLRB v. Television and Radio Broadcasting Studio Employees, Local 804*, 315 F. 2d 398, 402 (C. A. 3) case was decided on April 4, 1963 after the *Local 60* case but involved a direct violation of Section 8 (b)(5) of the Taft-Hartley Act which prohibits the exaction of excessive initiation fees under a union shop agreement. To the extent that the initiation fee was excessive, the employees who paid the fee were obviously entitled to a return. The case of *Morrison-Knudsen, Inc. v. NLRB*, 276 F. 2d 63, 73-74 (C.A. 9) decided February 19, 1960, is both under its facts and language more favorable to petitioners' position than the Board's. The case involved an alleged illegal hiring hall but the court refused to enforce the Board's requirements that dues and fees paid by all members using the hiring hall and restricted the return to the five members whose records showed had been forced to join the union against their will. The case of *Local 420, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States*

and *Canada, AFL*, 239 F. 2d 327, 331, (C.A. 3) decided December 11, 1956, involved an illegal closed shop and a requirement that the \$10 work permit fees exacted thereunder be returned. As indicated, this case was decided before the *Local 60* case and it is doubtful that the decision would be the same if presented at the present time. *NLRB v. Local 404, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL*, 205 F. 2d 99, 103-104 (C.A. 1), was decided June 10, 1953, and again involved the operation of an illegal union shop. However, the court permitted return of dues and fees only to those employees who the record showed had paid involuntarily. The case of *NLRB v. Broderick Wood Products Co.*, 261 F. 2d 548, 558-559 (C.A. 10) was decided November 12, 1958. There, the court upheld the return of all dues obtained under an unlawful union shop, but again this case was decided prior to the *Local 60* case. The case of *NLRB v. General Drivers, Chauffeurs and Helpers Local Union No. 886*, 264 F. 2d 21, 23 (C.A. 10) was decided February 20, 1959, and involved a situation where certain employees were forced to join the union by withholding contractual benefits from them. Specific coercion thus obviously existed and return to these employees of their dues checked off was upheld. *NLRB v. Cadillac Wire Corp.*, 290 F. 2d 261, 263 (C.A. 2) was decided May 10, 1961, and involved the return of dues unlawfully checked off during a 30-day grace period. *Paul M. O'Neill International Detective Agency v. NLRB*, 280 F. 2d 936, 947-949 (C.A. 3) decided June 22, 1960, involved the return of dues checked off by a company-assisted union, termed by the Court "an illegal organization." *NLRB v. Food Fair Stores, Inc.*, 307 F. 2d 3, 19-21 (C.A. 3) has been discussed in our principal brief as has the case of *NLRB v. Teamsters and Allied Workers, Hawaii Local 996*, 313 F. 2d 655, (C.A. 9).

As indicated, all of the aforementioned cases relied upon by the Board are distinguishable upon their facts. No case decided since the *Local 60* case in any way supports the Board in this case, and a number of the cases decided prior to that case required a showing of involuntary payment of the fee.

Respectfully submitted,

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BRIEF OF RESPONDENTS IN NO. 17631 ✓

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 17,521

LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS, INTER-
NATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, IN-
TERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,
AND C. B. MORROW, B. A. OF LOCAL 1351,

Petitioners

—versus—

NATIONAL LABOR RELATIONS BOARD

Respondent

United States Court of Appeals
for the District of Columbia Circuit

NO. 17631

FILED AUG 27 1963

NATIONAL LABOR RELATIONS BOARD

Petitioner,

—versus—

HOUSTON MARITIME ASSOCIATION, INC., MASTER STEVE-
DORES ASSOCIATION OF TEXAS AND THE INDIVIDUAL
RESPONDENT COMPANIES LISTED ON APPENDIX A HERE-
IN, WHO ARE MEMBERS OF THOSE ASSOCIATIONS,

Respondents

Nathan J. Paulson
CLERK

**On Petition to Enforce A Decision and Order Of The
National Labor Relations Board**

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Attorney for Respondents in No. 17631



STATEMENT OF QUESTIONS PRESENTED

The issues in No. 17521 and No. 17631 are:

1.

Whether substantial evidence on the whole record supports the Board's findings that respondent Employers violated Section 8(a)(1), (2) and (3) of the Act and petitioner Unions violated Section 8(b)(1)(A) and (2) of the Act by maintaining a hiring system, practice, or arrangement granting preference in employment to members of petitioner Unions, of lawfully requiring employees or applicants for employment, as a condition of employment, to designate petitioner Local 1351 as their bargaining agent, or unlawfully requiring non-member employees or applicants for employment, as a condition of employment, to pay or agree to pay to Local 1351 a percentage of their earnings derived from such employment.

2.

Whether substantial evidence on the whole record supports the Board's finding that petitioner Unions violated Section 8(b)(2) and (1)(A) by causing or attempting to cause respondent Employers to discriminate against employees because they were not members of Local 1351 or because they had filed charges with the Board, and respondent Employers violated Section 8(a)(3) and (1) of the Act by so discriminating.

3.

Whether the Board properly ordered petitioner Unions and respondent Employers, jointly and severally, to reimburse all present and former employees the percentage of their wages paid to respondent Local 1351 at a time that they were not members of that organization.

In case No. 17631:

Respondent Employers contend: that an issue is whether Local 1351 was an agent of respondent Employers, and whether there is substantial evidence to support such a conclusion.

BRIEF OF RESPONDENTS IN NO. 17631

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**On Petition to Enforce A Decision and Order Of The
National Labor Relations Board**

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*Cases or authorities chiefly relied upon are marked by asterisks.

Jurisdiction

Jurisdiction is as stated in the brief of petitioner National Labor Relations Board.

COUNTER-STATEMENT OF THE CASE

(Since under the Court's order these respondents must prepare their brief before the National Labor Relations Board petitioner, a more complete statement than would possibly be required is being made.)

The Hiring Hall Contract and Procedure

For a number of years the employers who composed the Houston Maritime Association and the Master Stevedores Association of Texas, which were of course trade associations having only a few office worker employees, were engaged in the operation of ships and performance of stevedoring operations in connection with ships (*i.e.*, the loading and unloading of ships) trading in the Port of Houston, Texas. They so performed services for practically all deep-sea general cargo steamships using that port. R. II, 144-146; Resp. App., 18-21, printed *infra*. For some time before the filing of the charges in this cause through these trade associations these employers had contracted with Local 1351, International Longshoremen's Association, to obtain wharfside clerical help through a hiring hall exclusively operated by the union local. G. C. Exh. 10A, R. II, 307, and Resp. App. 39, *infra*, where the then current contract is printed in full.

Under the contracts the employers could hire particular named men, and the practice was for their hiring supervisors to call the hall by telephone, ascertain those men available from a list of names of the available men, read to them by the union business agent, and request that the

man the supervisor wanted to hire be asked by the agent to report to the particular company's place of business on the waterfront, where he was to work and where he was actually hired. R, I, 258.

The Individual Complainants

Three men who went to the union hall and obtained employment through the hall, Field, Linnenberg and Vinson, filed charges *against the union only* on November 17, 1954, claiming unlawful discrimination because they as non-union men were charged by the union five per cent of wages earned as a hiring hall service fee while union men were charged only two per cent. R,I, 40, 49, 53. (Field amended his charge March 1, 1955, to complain also of the contract preference clause referred to below.)

All three charges and complaints were settled in the spring of 1955, the agreements being approved by the Board June 9, 1955. R,I, 72-82, 252.

The contract clause providing for preference to be accorded union members was eliminated as part of the settlements, R,I, 256, and G. C. Exh. 5b, R,II, 305; G. C. Exh. 4B, R,II, 294. (When the contract was renewed on February 14, 1957, the clause was formally deleted. R,II, 322.)

Being dissatisfied with the treatment given them by the union after the conclusion of the settlement agreements, the three men renewed their charge, and Vinson and Linnenberg filed amended charges bringing in the employers on October 6, 1955. R,I, 83. Further amendments were made in June, 1956, and July, 1956. R,I, 100 and 110

The individual acts of discrimination claimed by Field were found not established by the Trial Examiner, R,I, 276,

and his complaint was dismissed by the Board. R,I, 337. Linnenberg's complaint against the employers was dismissed by the Board because barred by Section 10(b) of the Act. R,I, 337. The only individual's complaint therefore remaining at issue here is that of Vinson.

Vinson's complaints of actual discrimination against him were found meritorious by the Trial Examiner. All the discriminatory practices against him were found to be those of the union: R,I, 270-272, by the Trial Examiner, and by the Board, R,I, 330-337 (first Decision) and R,I, 370 and 371 (Supplemental Decision). To Vinson individually the Board found the employers liable solely because parties to the contract which enabled the union to act against Vinson discriminatorily. R,I, 337 and 370-371.

There was no evidence that Vinson had ever directly sought work from any of the employers.

The Preference Clause

As stated, when the charges were first filed and until in connection with the settlement of these Field's charge was (in March, 1955) amended and the probable illegality of the clause was pointed out to the union (and the employers), the contract between the union and the employers' associations contained a clause providing that union members should be accorded a preference. G. C. Exh. 10A, R,II, 307, and Resp. App. 39. When its probable illegality was pointed out to them, the employers and union agreed to eliminate this clause, G. C. Exh. 4b, R,II, 294, and G. C. Exh. 5b, R,II, 305, at the time the charges were settled. The Trial Examiner so found, upon undisputed evidence.. R,I, 256-257.

The Trial Examiner found that the employers obtained men through the union hall without reference to union membership or lack of membership, holding "Nevertheless, the evidence adduced does not reveal that membership or non-membership usually plays a part in the selection of individuals for work." R,I, 259; and he found that since the evidence does not reveal the basis upon which the union business agents rotated work after the Settlement Agreement "... it is presumed that he made them in a lawful manner without discriminating between the union and non-union men." R,I, 260.

The respondent employers respectfully point out here that as found by the Trial Examiner there is no evidence that the chief clerks, the employers' hiring supervisors who called the hall for men, called for men upon a union or non-union basis. There is much evidence that they did not do so but chose men they considered fitted to perform the work for which they would be hired. Resp. App. 1, 4, 7, 28, 33, etc.

The Board initially refused to follow the Trial Examiner's recommendation and findings and held without any reference to the evidence adduced that the hiring system was before the Settlement Agreements originally preferential, was continued in operation after the deletion of the offering ^{and} clause, and was plainly unlawful. R,I, 332. In its Supplemental Decision it held the employers acted unlawfully by "being parties to a preferential arrangement" with the union "which gave preference to members of said local and its sister locals" (and also because parties to an arrangement which required job applicants to pay percentages, discussed below). R,I, 370.

The Service Fee Percentages and Agreement

Each applicant for employment through the hiring hall (which was operated exclusively by local 1351), whether a union member or not, signed a printed agreement *with the union* designating it as his bargaining agent and agreeing to pay the local "three per cent of my net wages as compensation for services rendered" G. C. Exh. 28, R,II, 323.

The employers were not parties to this authorization, had nothing to do with making any such agreement, and there is no evidence even that they knew before the time of the hearing that such written authorization existed. Please see particularly the testimony of Herrick Vestal, president and business agent of the Local at the time of the hearing, R,II, 58, quoted Resp. App. 2 and 3 *infra*, to that effect.

There is no evidence that the respondent employers conditioned employment on payment by the employees of percentages of the wages paid them to the union as a service fee for referring them to the employers for hiring. (These respondents do not read the Trial Examiner's Recommendations as finding to the contrary, R,I, 264, 268. Possibly the Board does not so hold. R,I, 332, 333, 336, and the Supplemental Decision, R,I, 370, 371. But please see the language of the Board's Supplemental Decision quoted last in this statement below and the Board's reference to the basis of its Supplemental Decision in its order denying these respondents, motion for a rehearing, dated February 18, 1963, saying:

"In said Supplemental Decision and Amended Order the Board modified its earlier findings, and, *inter alia*, found only by exacting a service fee as a

percentage of wages from *nonmember* job applicants as a condition of employment, did the Respondents violate the Act.")

On the other hand, respondent employers of course did know that the union collected service fee wage percentages from applicants. Before July, 1955, each employer separately from other employers paid his employees by a direct, individual payment. This was either by check or by cash money. R,II, 50, 51, 123, 132. Out of such money the individual paid the union local a percentage, by check or cash. R, II, 60, 94, 105, 112, 129, etc. As the Examiner found, R,I, 244, 264, prior to the settlement the union collected two per cent of earning from union members and five per cent from non-union workers. The Settlement, approved by General Counsel June 9, 1955, was made, the Examiner found without dispute, on the understanding that if the percentages charged union members and non-union workers were equal in amount their collection was lawful. R,I, 268. From April, 1955, to November, 1955, the union collected percentages from all workers of five per cent, R,I, 264, and after November, 1955, three per cent.

In July, 1955, the respondent employers instituted a joint check pay system, each individual being paid all his weekly earnings whether he worked for one or more employers by jointly computed pay checks. R,I, 264; R,II, 139. An individual thus received his total earnings from all employers in a joint payment. Such payment was only by check, not cash. However, he was paid the total amount of his earnings in two checks, one in the amount of the percentage service fee and the other in the amount of the balance of his wages. R,I, 264.

The Trial Examiner found that because of other benefits granted union members by the Local the equality of service fees paid the Local by union and non-union workers after the settlement was apparent rather than real. R,I, 264-270. But he concluded in substance that it would be lawful for percentages to be paid where equal in amount and reasonable in relation to the lawful cost of operating the hiring hall. R,I, 281-2, 286.

The Board initially found that by being parties to the "exclusive hiring hall arrangement" and by conduct "facilitating the payment of these percentages" the employers violated the Act, R,I, 336, and ordered them jointly with the union to pay to all employees all percentages they had paid to the union. R, 339, 340.

In its Supplemental Decision the Board affirmed the previous grounds of its decision, but by a majority held the employers as well as the union liable to pay to only the *non-union* workers the percentages of their earned wages these men had paid as a service fee to the local, requiring no reimbursement to union members. R,I, 370-373, holding at p. 373 "It thus follows that . . . in the circumstances of these cases, only by exacting a service fee as a percentage of wages from *non-member* job applicants as a condition of employment, did the Respondent Associations and their Member Companies violate Section 8(a) (1) (2) and (3), and the Respondent Unions violate Section 8(b) (1) (A) and (2) of the Act."

There is, as summarized above, no evidence that the respondent employers ever "exacted" a service fee as a condition of employment.

POINTS RELIED UPON

1.

The union Local 1351 had exclusive control and operation of the hiring hall under the terms of a lawful contract with respondent employers, none of whom had any part in the acts of discrimination practiced against the individual complainant Vinson, and the National Labor Relations Board's order requiring the employers to reimburse Vinson for monetary losses incurred solely as a result of the acts of the union is unlawful and should be here refused enforcement.

2.

The order of the National Labor Relations Board requiring respondent employers to reimburse all non-union workers percentages of wages already paid to them by respondent employers and by them paid to the union as a hiring hall service fee is unlawful because not reasonably designed to effectuate the purposes of the National Labor Relations Act and is punitive and arbitrary in character, and should therefore here be denied enforcement as to the respondent employers.

SUMMARY OF ARGUMENT

1.

The respondent employers did not participate in any acts of discrimination against Vinson of the union at the hiring hall, which the union exclusively operated. Vinson never made application to any of them for work. The Board here holds these respondents liable to Vinson solely because

parties to the hiring hall contractual agreement. The law is settled that employers are not liable for a union's illegal acts simply because they have a contract with the union.

2.

The Board's order requiring respondent employers to pay again wages already paid by them to their non-union employees is punitive and therefore ultra vires. The respondent employers paid all their employees in the same manner, to each his full wages earned, without regard to whether an employee was a union member or not. The fact that the employers knew that their employees paid a percentage of their wages to the union as a hiring hall service fee, or that the employers made the payments in a manner that made it easy for an employee desiring to do so to pay the percentage service fee, does not make unlawful the wage payments. Nor is the Board's blanket order of reimbursement an order which would reasonably effectuate the purposes of the National Labor Relations Act. Its order is therefore unlawful.

Point No. 1 Restated

The union Local 1351 had exclusive control and operation of the hiring hall under the terms of a lawful contract with respondent employers, none of whom had any part in the acts of discrimination practiced against the individual complainant Vinson, and the National Labor Relations Board's order requiring the employers to reimburse Vinson for monetary losses incurred solely as a result of the acts of the union is unlawful and should be here refused enforcement.

ARGUMENT

The respondent employers are held jointly liable with the union by the Board in two different and distinct ways: (1) to pay to the individual complainant Vinson his wages lost by reason of being unlawfully denied an opportunity to work by the union business agent, and (2) to pay again to non-union workers percentages of their earnings paid by them to the union as a referral service fee.

Referring in the argument here to the first liability so held, it is noteworthy indeed that when the charges were first filed complaint was made only against the union's discriminatory conduct. No charge was made against the employers nor any one of them.

The evidence with respect to active discrimination practiced against the complainant Vinson relates only to action of the union at the union-operated hiring hall.

There is no evidence that Vinson ever sought employment directly from any employer company. How can it be lawfully found that any particular employer discriminated against Vinson and is hence liable to him for lost wages when there was no evidence that Vinson might ever have worked for that employer?

And finally, the recommended order of the Trial Examiner, the first Decision and Order of the Board, and the Supplemental Decision and Order of the Board all hold all of the respondent companies *collectively* liable to Vinson, establishing plainly that these respondents are being held liable to pay Vinson large sums of money for no acts of discrimination practiced against him by any single one of them.

The Board in its Supplemental Order and Decision having corrected its former error in finding the hiring hall contract illegal, following the decisions of the Supreme Court in *Local 357, International Brotherhood of Teamsters, etc. v. N.L.R.B.*, 1961, 365 U.S. 667, 81 S. Ct. 835, and *Local 60, United Brotherhood of Carpenters, etc.*, 1961, 365 U.S. 651, 81 S. Ct. 875, it is clearly apparent, as the language of its Supplemental Decision appears to state, that the employers here are being held liable to Vinson for *acts of the union*, only because they are parties with the union to a hiring hall contract which the Board now acknowledges is plainly lawful.

The law is clearly settled that employers are not required to police a lawful contract with a union, and are not liable for unlawful actions of a union with which they have a lawful agreement:

In *Del E. Webb Const. Co. v. N.L.R.B.*, 8 Cir. 1952, 196 F.2d 841, the Court of Appeals for the Eighth Circuit held that:

"The factor in a hiring hall arrangement which makes the device an unfair labor practice is the agreement to hire *only* union members referred to the employer." (p. 845).

The Court then went on to find that none of the men claiming discrimination by the company ever applied to the company for employment (just as Vinson never applied to any of the employers here) and hence the company could not be found to have been guilty of discrimination.

The case therefore clearly holds that the employer party to a lawful hiring hall arrangement can be held responsible only for its own discriminatory acts.

In explicit language this holding has been affirmed to be the law by the Court of Appeals for the Tenth Circuit in *N.L.R.B. v. Brotherhood of Painters, etc.*, 10 Cir. 1957, 242 F. 2d 477, at 480:

" . . . The facts relied on by the Board, if sufficient to show an illegal hiring practice, show only that such a practice existed as a unilateral policy of the employer with nothing more than passive acquiescence upon the part of the union. Neither employer nor union can be held accountable for the unilateral actions of the other. Neither is bound to police the other nor can it be inferred that an unfair labor practice indulged in by one is caused by the undisclosed activity of the other or through the tacit understanding of both. Evidence of such activity or understanding is necessary. *Del. E. Webb Const. Co. v. N.L.R.B.*, *supra*. . . ."

The Court of Appeals for the Eighth Circuit has reaffirmed this holding in *N.L.R.B. v. International Union of Operating Eng., etc.*, 8 Cir. 1960, 279 F. 2d 951, at 954, using these words:

"It is true that, absent proof of an unlawful agreement, neither the employer nor the union can be held accountable for the unilateral actions of the other. See *Del E. Webb Const. Co. v. N.L.R.B.*, 8 Cir. 196 F. 2d 841, 38 A.L.R. 2d 402; *N.L.R.B. v. Brotherhood of Painters*, 10 Cir., 242 F. 2d 477, at pages 479, 480. Furthermore, as stated in *Del E. Webb Const. Co.*, *supra*, 196 F. 2d at page 845, 'the factor in a hiring hall arrangement which makes the device an unfair labor practice is the agreement to hire *only* union members referred to the employer.'"

(Of course these decisions are consonant with the general principles of law governing responsibilities of a party for the acts of an independent contractor. The law of course compels an employer to negotiate with a union representing his employees, *N.L.R.B. v. Sands Manufacturing Co.*, 1939, 306 U.S. 332, 58 S. Ct. 508, and must sign an agreement—and thus be bound by its terms—when agreement is reached. *H. J. Heinz Co. v. N.L.R.B.*, 1941, 311 U.S. 514, 61 S. Ct. 320; *N.L.R.B. v. Dalton Tel. Co.*, 5 Cir. 1951, 187 F. 2d 811, cert. den. 342 U.S. 824, 72 S. Ct. 43. It would be manifestly unjust to subject an employer compelled by law to make a contract with a union to be responsible for the union's illegal actions simply because bound to the union by a lawful contract.)

These cases, direct holdings applicable to the established facts here these respondents respectfully submit, establish beyond question the illegality of holding respondent employers here liable to complainant Vinson for the alleged discriminatory acts of the union officials at the union-operated hiring hall.

Point No. 2 Restated

The order of the National Labor Relations Board requiring respondent employers to reimburse all non-union workers percentages of wages already paid to them by respondent employers and by them paid to the union as a hiring hall service fee is unlawful because not reasonably designed to effectuate the purposes of the National Labor Relations Act and is punitive and arbitrary in character, and should therefore here be denied enforcement as to the respondent employers.

ARGUMENT

The Board in its initial Decision ordered the employers along with the International and the Local Union to repay and to refund to all the men referred to the employers through the hall for hiring, union members and non-union workers alike, all percentages paid by them to the Local as a referral service fee, the so-called Brown-Olds disgorgement remedy.

No doubt because confronted with the decision of the Supreme Court in *Local 60, United Brotherhood of Carpenters & J. v. N.L.R.B.*, 1961, 365 U.S. 651, 81 S. Ct. 875, the muchly divided Board in its Supplemental Decision concluded it had erred in ordering the union members to be paid twice by the employers and to be refunded by their union percentages paid by them to it but decided to require such payments to the *non-union* workers.

Respondent employers respectfully submit there is no more logic or justice in the second reimbursement order than in the first: the second is just as clearly punitive as the first and hence under the *Local 60* decision, and the cited *Republic Steel Corp. v. N.L.R.B.* decision, unlawful and not subject to enforcement.

Such basic injustice and illogic can be shown quite easily: the persons (whether union or non-union, it makes no difference) who obtained employment through the hiring hall and utilized the Local's services and facilities certainly were not discriminated against by anyone as to the work given them and the wages earned. Those persons who sought employment at the hiring hall and were *denied* the chance to earn wages, if there were any such persons, on the contrary could be justly and logically held to have

been discriminated against. Yet the Board does *not* order payments to be made to persons who were denied employment: it orders payments made to persons who *were* employed and who therefore cannot be said to have been treated unfairly!

The Vice of the Board's order is further apparent in viewing the matter in another way: the percentages paid by the men (union and non-union alike) were in direct proportion to the amount of work given them (and wages earned). Had the Board ordered payment to be made to men *denied work, in proportion to the wages lost*, there might be some reasonable relation between the remedy ordered and any discrimination in operation of the hiring hall found. But as it is, there can be demonstrated no reasonable relationship between any illegal conduct and the remedy sought to be enforced, and the order of reimbursement is clearly as punitive in the Supplemental Decision as in the first.

That the order is punitive is apparent upon yet another consideration: The Board clearly holds or acknowledges that a union may lawfully charge a reasonable referral fee consisting of a percentage of wages, footnote 10, R.I, 373 (and please see the decision of the Court of Appeals for the Second Circuit, decided July 8, 1963, apparently not yet reported, Nos. 375-6—October Term, 1962, *Local 138, International Union of Operating Engineers, etc. v. N.L.R.B.*; *N.L.R.B. v. Nassau and Suffolk Contractors Assn., et al*, at pp. 2861-2862), and yet it orders a complete refund of percentages paid by the non-union men to the local and does not order the local to remit to these men only an amount in excess of a reasonable service percentage.

As to these respondent employers the punitive and arbitrary character of the Board's order is even more striking: The men were paid their wages in full, both union and non-union alike and without regard to union membership, and the local received the percentages as a service fee. The Board orders the employers to repay wages already paid, claiming that by so doing union membership is at least not encouraged by the employers and aid given the Local is withdrawn. Yet to the extent the employers might relieve the Local of any repayment obligations by complying with the Board order, it can hardly be denied that the employers relieve the Local of the need to disgorge money received and are actually contributing money to that extent to support and maintain the Local, certainly the amounts above the reasonable cost of maintaining the hiring hall. And if the Board's holding be taken to mean that the non-union members are entitled to referral services paid for by the employers, how can it be said that the employers in so paying these fees are not encouraging the non-union men *not* to join the union?

The reasons given by the Board for holding the employers liable to pay again percentages of wages already paid afford no excuse for the arbitrary and punitive order: First of all, contrary to the Board's statement or implied holdings, the evidence is clear and undisputed that the union, *not* the employers, required all men (union and non-union) to sign an agreement designating the union their bargaining agent and agreeing to pay a service fee consisting of a percentage of their wages. Secondly, there is no evidence the employers conditioned employment on payment of percentages. Thirdly, the fact that the employers "facilitated" payment of such percentages by paying the men in two checks can hardly be deemed material:

Had they been paid in cash, the trivial difference in trouble to the men or to the union in calculating the percentages and paying the local by cash instead of check can hardly be said to promote or discourage union membership, the settled test of illegality. Can the Board be taken to hold that employers must pay employees secretly, in a way that the Local could not ascertain the amounts of wages paid, for them to pay in compliance with the National Labor Relations Act? And lastly, how can the Board as it now does find payments by two checks lawful and not promoting or discouraging union membership when the two checks are given union members and unlawful when given non-union workers, the identical manner of payment being followed as to each man without regard to union membership?

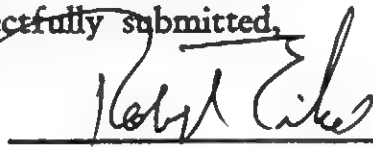
Respondent employers respectfully submit that the Board's order as to them is plainly unlawful, because punitive and arbitrary under the test stated by the Supreme Court in *Local 60, United Brotherhood of Carpenters & J. v. N.L.R.B.*, 1961, 365 U.S. 651, at 655, 81 S. Ct. 875, 877-8, as follows:

" . . . Where no membership in the union was shown to be influenced or compelled by reason of any unfair practice, no 'consequences of violation' are removed by the order compelling the union to return all dues and fees collected from the members; and no 'dissipation' of the effects of the prohibited action is achieved. *National Labor Relations Board v. District 50, United Mine Workers*, supra, 355 U.S. 463, 78 S. Ct. 392. The order in those circumstances becomes punitive and beyond the power of the Board. Cf. *Republic Steel Corp. v. National Labor Relations Board*, 311 U.S. 7, 10, 61 S. Ct. 77, 78, 85 L. Ed. 6"

CONCLUSION

WHEREFORE, the respondents Houston Maritime Association, Master Stevedore Association of Texas, and the individual employer companies members thereof respectfully pray that the Supplemental Decision and Order of the National Labor Relations Board enforcement of which is sought be here denied enforcement as to them in whole and in part, and that the Board be directed as to them to dismiss the complaints in whole and in part.

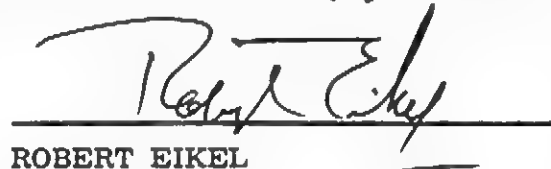
Respectfully submitted,

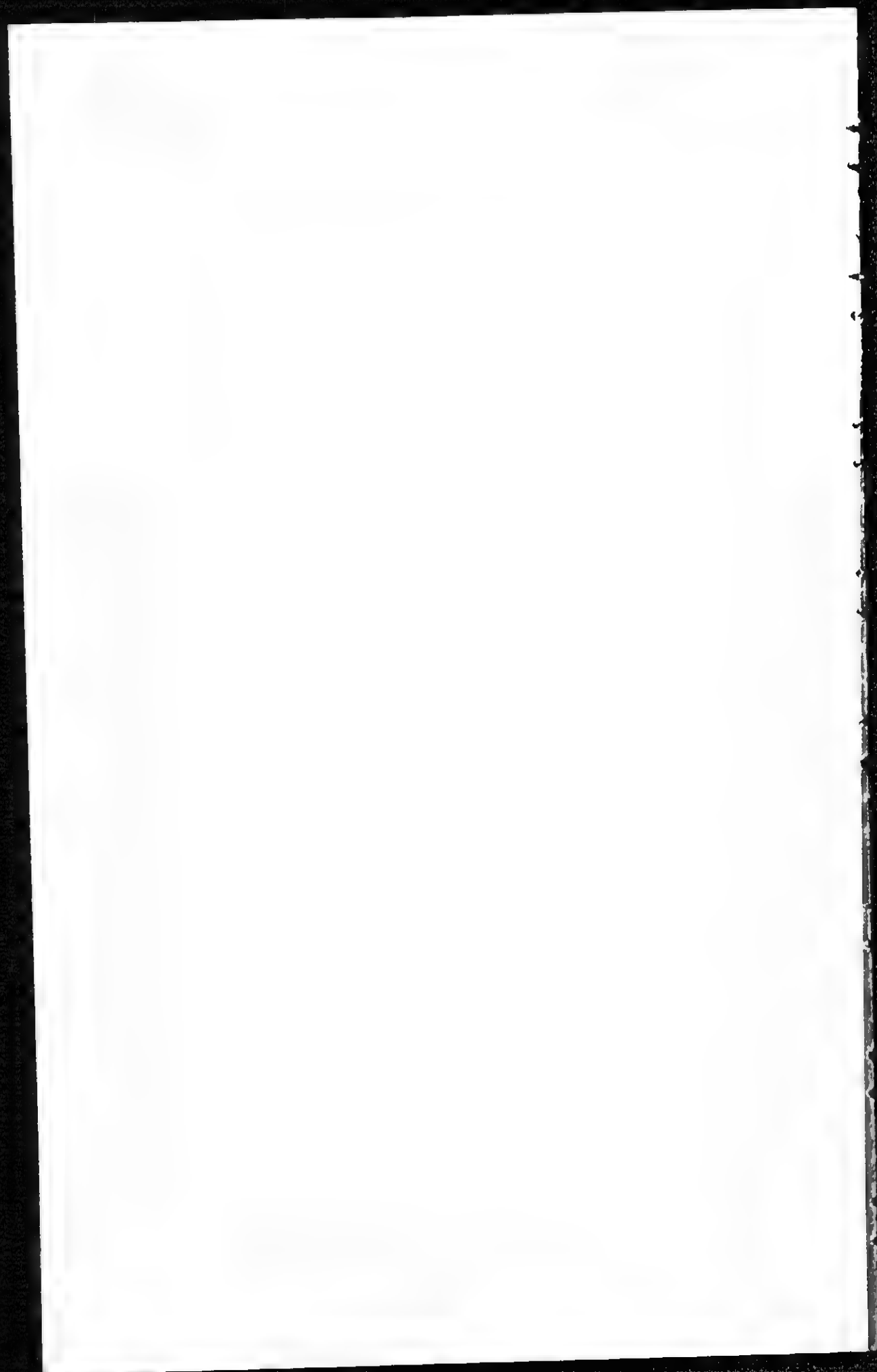


Robert Eikel, Attorney for Respondents in No. 17631

CERTIFICATE OF SERVICE

I hereby certify that service of the within brief was made upon Marcel Mallet-Prevost, Assistant General Counsel for the National Labor Relations Board, by mailing copies of same to him at his offices at the National Labor Relations Board, Washington, D. C., and upon Sewall Myer by delivering same to him at his office, First City National Bank Building, Houston, Texas, and upon Herbert S. Thatcher by mailing copy to him at his office at 1009 Tower Building, Washington 5, D. C., this 23rd day of August, 1963.


ROBERT EIKEL



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APPENDIX

(354) HERRICK VESTAL

(379) Q. Did you ever furnish to Rice, Kerr & Company a list of the union membership?

A. I don't believe that we did.

(380) Q. Did Rice, Kerr & Company ever demand that you get a list of the union members and give it to them?

A. Not that I remember, no, sir.

Q. Now, did Rice, Kerr ever attempt to compel you to order men by virtue of membership or non-membership in the union?

A. Not that I remember. Tell me to get a competent man to take care of the work?

Q. As a matter of fact nearly all of these monthly men are union members, is that right, union members?

A. Possibly so now, but there's been a time when there's been a great number of men that didn't belong who were on salaries, and a great number that did belong who were on salaries.

Q. But the practice followed by you as long as you have been clerk for Rice, Kerr in getting extra men was to call the hall, and then a list of the men available to work was read out to you, and you told them which ones you wanted to work for you, is that right?

A. That's right.

Q. And your decision was made on the basis of their ability to handle a particular kind of checking job or clerking job required, is that right?

A. Yes, sir.

Q. You didn't order men on the basis of whether they were a member of the union or not?

A. No, sir.

(381) Q. And your knowledge of whether they were union members or not was based on your membership, yourself, in the union? Just happened to know, in other words, is that right?

A. Now, what was that question?

Q. I say your knowledge of their union membership, that you say you knew usually whether they were members or not, was gained by the fact that you were a member of the union and knew most of the members in the union, is that right?

A. Yes, sir, I did know which ones belonged.

Q. You never inquired which people's names read out to you were members of the union when you called for them?

A. No, usually when I called I knew which men belonged and which men did not belong.

Q. Did you always take a man who were or who was a member of the union, or did you sometimes take men who were not members of the union?

A. Well, most of the time I think, with Rice, Kerr, that I had as many or more men, lots of times, that didn't belong to the union that did belong.

Q. When you were given the names of men by the Business Agent did he designate which ones were members of the union to you or not?

A. No, sir, just called out the names.

* * * *

(436) HERRICK VESTAL, Recalled

(439) Q. (By Mr. Eikel) Everybody you say worked out of the hall filled one of those applications out, is that correct, sir?

A. As far as I know. We are still in the process of possibly a few that haven't, but we are still trying to see that everyone that works through the hall either has filled one out or will fill one out.

Q. Now, those are strictly the Local's papers, is that correct, sir?

A. Yes, sir.

Q. The fact that they were being filled out or used in any respect was not communicated to any of the employer companies, is that correct?

A. Not that I know of, no, sir.

MR. EIKEL:

All right, sir. That is all. Thank you.

MR. DOWD:

No questions.

TRIAL EXAMINER:

You now offer the document?

MR. WHITTAKER:

I now offer GC-28 in evidence.

TRIAL EXAMINER:

Any objections?

MR. CRYSTAL:

We have no objections.

MR. DOWD:

No, sir.

(440) TRIAL EXAMINER:

The document is received without objection.

(The document heretofore marked General Counsel's Exhibit No. 28 for identification was received in evidence.)

(440) CHARLES CURTIS STEINER

* * * * *

(447) Q. Now, as for outbound cargo is it much the same procedure?

A. In reverse, yes. Of course the outbound cargo is far in excess of the inbound cargo. In other words, you have, oh, I would say 50 times as much work involved in outbound as you do in inbound.

In other words, your clerical staff on outbound is much greater than your staff on inbound, and that (448) is looking at it generally, not against each individual ship, but I mean generally.

Q. Well, when you are ordering men from Mr. Morrow down there, or were, back in 1954 and '55, was there ever an occasion in which he exhausted the list?

A. That happens very regularly.

Q. Well, is there any way for you to know from your end of the telephone whether he's read out completely all of the list?

A. I don't see— we haven't got television. I have to take his word for it.

Q. Yes, sir.

A. I find no reason to doubt the man. He's always called the roll and quite often I have asked him to call it to me again because on the first time I am trying to select out of this group of twelve which one of those twelve men could do my job the best, so I ask him to call it again.

Q. Now, has there been a time when you tried to borrow a clerk from some other steamship agent?

A. Yes, I have borrowed help from other steamship companies, and they in turn have borrowed from me.

Q. Well, how do you go about borrowing a clerk? Do

you call the other steamship agent or do you call Mr. Morrow first?

A. Call Mr. Morrow first, and if his supply of clerks (449) is completely exhausted, I go and borrow from the neighbor, go to TTT, go to Lykes, go to any other outfit down there who can possibly loan me one for a short time.

Q. Would you describe for the record Berth 5 at Long Reach? You said from the neighbor. Those offices over there.

A. Well, I mean in the immediate vicinity of our office, next door we have TTT and then next door to them is Lykes, and, oh, I would say a thousand feet from there is just about all the rest of the steamship companies' chief clerks are available in that vicinity.

Q. And if, say, Lykes can lend you a clerk, how do you then handle it with Morrow?

A. I call him immediately and tell him I have been able to borrow one from Lykes to take care of me for such time until one of my own people is available or he can supply somebody through the hall. The only time it's ever been necessary to borrow anybody has been on either a timekeeping job or on an outbound cargo job. That's the only time I have ever needed anybody.

In other words, like yesterday I was fortunate enough to take care of eleven ships with my own people. If there had been twelve I would have had to go to Lykes to get them or somebody else because there was nobody available at the hall, that is, no outbound cargo clerk.

Q. Well, now, do you draw a distinction between an (450) outbound cargo clerk and an inbound cargo clerk?

A. Absolutely. They are two completely distinct jobs.

Q. Well, I take it the outbound requires more paper work?

A. No, it requires more know-how.

* * * *

(543)

WILLIAM A. KEITHER

* * * *

(545) A. No, they are not. It's a privately owned company by Mr. Benjamin Harris.

Q. Well, in connection with loading and unloading ships here what are your duties as dock superintendent?

A. As dock superintendent I handle — well, we do business directly with Mobile where we obtain the (546) stowage and, of course, all the booking is done here in Houston, New York and elsewhere, and as the cargo moves into Houston it's my duties and job to see it's properly placed on the docks and that it's properly loaded on the ships.

Q. And now are there any other monthly clerks?

A. No, there never has been. I am the only man.

Q. Are there any 40-hour a week guaranteed clerks?

A. No, sir.

Q. Do you on occasion have to order extra clerks and checkers, timekeepers?

A. I haven't ordered a checker in six years, but I do order clerks every time I work a ship.

(547) Q. I say if you don't like their work you can send them back anytime?

A. Correct.

Q. Who keeps the time of these extra clerks?

A. I have nothing to do with the time. That's — the timekeeper is hired by the contractor, the loading contractor, Mr. Harris, or the Southern Stevedoring and Contracting Company. They furnish the timekeeper and, of course, bill it back to us on their stevedoring invoices for the cost of loading or discharging the ship.

However, I point out that we don't discharge any cargo here in Houston. That's the reason why I never have an occasion to hire checkers, because we don't have any in-bound.

All our ships usually discharge on the East Coast and from that point we load coming down into the West Gulf and then out on the West Coast.

Q. Well, now, when you get hold of Mr. Morrow about hiring these extra clerks, how does he handle it?

A. Well, to tell you the truth, I hire about fifteen clerks a year because all we have is about one ship a month. That is it.

So I call up and usually I can always get a man, (548) somebody, and, like I say, I know who is qualified and who isn't, that can do the type of work that I have because personally I have broken in a lot of men, myself, during the time, showed them how to be clerks, and a lot of times they are available, and I have them for that reason.

Q. Yes, sir.

As far as the man he send you being a button man or permit man —

A. That doesn't make any difference to me. I strictly look upon a man's qualifications.

If he can't do the work I will know in about fifteen minutes, and he's gone, and if I can't get one that's satisfactory, I do it, myself, double up, in other words.

Q. Well there's not very many button men available, are there?

A. Oh, yes, I can always get them, at least one, because there's 105 members.

Q. Well, a couple of years ago before there were 105 members?

A. Well, a couple of years ago there wasn't as much

work as there is now, as far as I am concerned with the type of work that I had.

(552)

WILLIAM W. WAITE

* * * *

(555) A. As far as E. S. Binnings is concerned they are independent, that is, as far as my knowledge. I don't go into the personal matters.

(556) Q. Yes, sir.

Now, are there any other monthly clerks on the E. S. Binnings payroll besides yourself?

A. On the wharf in Houston, no sir. They have some uptown in the office.

Q. Are there any 40-hour a week guaranteed clerks on the payroll?

A. Yes, sir, I have one.

Q. What is his name?

A. R. E. Shilk, Roy Shilk.

Q. Now, do you ever have occasion to order extra clerks and checkers?

A. Yes, sir.

(558)

S. D. GARDNER

* * * *

(562) Q. To checkers, I mean?

A. Yes, sir.

Q. Well, on occasion has Mr. Morrow had to acquaint you with the experience of some of the men that were left on the list that you didn't know about?

A. What was that question again now?

Q. I say on some occasions has it been necessary for
(563) Mr. Morrow to tell you about the experience of

some of those men who were still left with whom you were unfamiliar?

A. Well I ask him about his physical, if it should come to that point, his physical ability.

Q. Now, how many ships are you receiving a month now?

A. Well, I would say on an average possibly twenty.

Q. Is your business heavier now than it was last year?

A. I believe it is. I believe it's a little heavier each year.

Q. Has that been true since '54?

A. Yes, sir.

Q. Do you receive any coffee ships?

A. Occasionally but not so much. It's not running as heavy, that particular part of the business is not as heavy.

Q. Have you ever used checkers on coffee ships?

A. Yes, sir.

Q. Is that dangerous?

A. Well, it's hold work. Each company might work a little different, but we place our men in the hold of the vessel. We might put as high as two men in the hold of the vessel. We attempt to segregate it as it comes from the holds, and any hold work is considered dangerous.

Q. Well, some coffee, though, is chopped on the docks, isn't it?

A. Well, we have had pretty good—we haven't had to chop any coffee on the dock in quite some time. We (564) have been very successful in segregating it in the vessel's holds, which is a quicker operation and less expensive. We try to land the coffee on the dock ready to go and it's usually less delay, it's ready to be shipped.

Q. When you say some time what length of time do you refer to?

A. What was that now again?

Q. When you haven't for some time, what length of time do you refer to, a year?

A. Well, I would say since we have actually had a chopping gang with coffee possibly two, to two and a half years, actually chopping on the wharf.

Now, there are other commodities that we chop on the wharf, but the coffee I am speaking of in particular.

Q. How are the clerks and checkers under you paid?

A. Well, they are paid by check. They draw their money weekly.

* * * *

(591) DAVID McKEE FRAZIOR

* * * *

(591) Q. What type of an organization is Harris County Ship Channel & Navigation District?

A. A subsidiary department of the State of Texas.

* * * *

(592) Q. (By Mr. Whittaker) As a terminal superintendent, Mr. Frazier, what are your duties?

A. As assistant terminal superintendent, I am directly charged with the loading and unloading of all cargo onto and off the dock from the land carrier of the Navigation District. I have nothing whatever to do with the loading and unloading of the steamer.

Q. Do you employ clerks and checkers and timekeepers?

A. We use clerks, timekeepers, and checkers, yes, sir.

Q. Do you have any on a monthly basis?

A. No, sir, we do not.

Q. Do you have any on a guaranteed 42 hour a week basis?

(593) A. We have five or six; I don't recall the exact number, that we have had for quite a number of years that we work forty hours a week.

Q. Are any of them checkers, meaning—

A. At that time, no, sir.

Q. When you have occasion to use an extra clerk or extra checker, what do you do?

A. We call the Clerks and Checkers Local and tell them we need so many men at such and such a place.

Q. Do you talk to Mr. Morrow?

A. When I talk, yes, as a rule.

Q. Do you order the clerks by name?

A. When we need a clerk, we do, because there is a higher rate involved.

Q. When you order a checker, do you order him by name?

A. We do not—I do not.

Q. Then you pay him on the checker's rate?

A. That's right.

Q. Now, I think it's clear; but just to be sure it's clear in the record, you are not a party to the contract between Local 1351 and the Galveston Maritime Association, Houston Maritime Association, and the Master Stevedores of Texas, are you?

A. The Navigation District does not sign a contract with any labor organization.

Q. In your employing and paying the clerks and checkers and timekeepers do you follow the contract?

A. We follow the accepted policy, whatever is agreed between the Maritime Associations and the various unions.

Q. Including 1351?

A. That's right.

Q. Now, have you ever hired a clerk without going to Local 1351?

A. Not that I recall.

* * * *

(595) Q. Did you ever complain to Local 1351 about using him?

A. Not that I can recall.

Q. Now, do you know Mr. William Rownd?

A. Yes, sir.

Q. What is his title?

A. He is the material handling supervisor for the Navigation District.

Q. Does he also order clerks and checkers?

A. The past two years he has ordered most of them.

* * * *

(602) WARREN CHESTER EITELBACH

* * * *

(602) Q. Do you hold a position or title?

A. I am on the Board of Directors now.

(603) Q. Have you been the president of it?

A. Yes, sir.

Q. You are no longer the president of it?

A. No, sir.

Q. And being on the Board of Directors or being president were you paid for your services?

A. No, sir.

Q. What is the purpose for which the association is organized?

A. Well, it's to improve the situation in the ports as we can, conduct safety programs and conduct a pay-off system in the various ports.

Q. Are you familiar with an expression used on the waterfront, "the bible"?

A. Yes, sir.

Q. Would you explain for the record what that is?

A. Well, the first time a man goes to work on the waterfront he needs a Social Security card. And we fill out the W-4 form for him, that is, our timekeeper does; and we submit that to the Master Stevedores Association—

Q. When you were saying "we" before that, was it the Star Stevedoring Company?

A. Or Southern, either one.

And we submit the form to the Master Stevedores Association and they issue a work number for that (604) individual which becomes his identification for the balance of the time he is working on the waterfront.

The work number is then entered into what you call the "bible." Everyone employed on the waterfront is in—his name, address, number of dependents, Social Security number, and his work number is entered in the "bible."

Q. Is that revised at any time?

A. We revise it when we feel that we have too many names in it of men who are not working on the waterfront.

Q. When was the last revision?

A. About two years ago.

Q. After this "bible" is made up, so-called, to whom is it distributed?

A. Well it's distributed to the stevedoring companies who, when they hire a timekeeper, issue him a "bible."

Q. And from that he is able to get the necessary payroll information rather than from the employees?

A. As the gang foreman, in the case of longshoremen, submits to our timekeeper a list of work numbers and names of the men who are employed in his gang.

Q. Who pays for this printing and distributing of the "bible"?

A. The stevedoring companies, through the Master Stevedores Association.

Q. Do they pay for it by assessment or do they (605) have regular dues, or what

A. We have monthly dues.

Q. How is the I.B.M. Company paid, is it paid according to the work done for each stevedore, or what?

A. Yes, sir. It's prorated among the stevedoring companies sharing in the pay-off system.

Q. In other words, if one stevedoring company had occasion to use it for a thousand times, would he have to pay as much as a stevedoring company using it for only a hundred times?

A. No.

Q. Just to have the record clear, what is a time ticket?

A. A time ticket is also called a stevedoring ticket, on which is entered the name of the port, the date, the gang foreman's name and number, the hatch that he is working in, and the time of starting, and the description of the commodities handled or work performed, what rate of pay he carried per hour and the total amount of money earned by the gang for that period.

Q. What is a gang sheet?

A. A gang sheet has probably the same heading as a stevedoring ticket inasmuch as it has the port's name date, gang or individual name if it's just an individual on the ticket, a hatch number if it's a gang, and then there are columns across the gang sheet, the first one being the man's work number, the next one his name, and the next column what time he goes (606) off, and then—I mean time on and time off—hours worked and money earned for that work period, which is brought forward then as a total which must balance with the stevedoring ticket.

Q. Is the gang sheet used just for the longshoremen mostly?

A. We use it on every man employed.

Q. Well, as to timekeepers, clerks, and checkers, where is this information kept, is it the same, on a time ticket and gang sheet too?

A. We use the same stevedoring ticket and gang sheet for clerks, checkers, and timekeepers.

Q. Well, after these gang sheets are made up, what happens to them and the tickets too?

A. They are made up at the berth where the ship is working, by our timekeeper; they are picked up at the end of the work period, either by the supervisor working the ship or perhaps the timekeeper if he is close to our office he comes in, comes in to my desk; I check them for the rates that were paid, how far the gang was advanced by the work performed.

I sign them, or rather I initial them, and they are sent to our pay office in the Cotton Building.

The gang sheets and the stevedoring tickets are again checked there to see that the proper work number was used with the names on the sheets.

The gang sheets then go to I.B.M.

Q. Is that on—is that to Mr. Trostmann?

(607) A. No. Mr. Trostmann is not with the I.B.M.

Q. I see.

You send them direct to the I.B.M.?

A. I don't. Our office in town does.

Q. And you never see the checks then, do you?

A. No, never.

Q. Now, your name appears on the contract—excuse me—the Master Stevedoring Association of Texas' name appears on the contract with the various I.L.A. locals, in-

cluding Local 1351; as president, did you participate in any of the negotiations?

* * * *

(608) Q. Did you change your method of paying them?

A. No, sir.

* * * *

CROSS EXAMINATION

Q. (By Mr. Crystal) Mr. Eitellbach, did anybody tell you it was necessary to change your order or procedure in hiring men before you saw those notices?

A. No, sir.

* * * *

(609) Q. Did anyone tell you you were doing something that required changing in the method of payment?

A. No, sir.

EXAMINATION

Q. (By Trial Examiner) This document you referred to as the "bible," who actually compiles that?

A. Presently?

Q. Who compiled it originally?

A. Originally, we employed on a quarterly basis Mrs. Lancaster.

Q. When you say "we," you mean it was compiled by the Association or by some employer?

A. By the Association.

Q. Then the Association that occasionally revises it, it is the Association that occasionally revises it, is that right?

A. Yes, sir.

TRIAL EXAMINER:

Any further questions?

MR. WHITTAKER:

Yes, sir.

(610) REDIRECT EXAMINATION

Q. (By Mr. Whittaker) That is not only as to members but as to anyone working on the waterfront, isn't it?

A. I didn't understand.

Q. It applies not only to members working for M.S.A.T. but all employees who are not working for a company belonging to M.S.A.T.?

A. You got me confused now.

Q. Well now, all stevedoring companies are members of M.S.A.T., is that correct?

A. To the best of my knowledge all stevedoring companies are.

Q. Well, O. K.

TRIAL EXAMINER:

As I understood it, this "bible" is a listing of all people who engage in work pertaining to the loading and unloading of freight cars, trucks, and ships in the Port of Houston, no matter who they work for; is that right?

THE WITNESS:

Well, there may be some barge outfits here who employ people unloading barges and going into cars that we don't know anything about. It is made up of all people employed by the stevedoring companies or steamship companies.

TRIAL EXAMINER:

All right.

Q. (By Mr. Whittaker) Does it include the names of anyone that is not working out of I.L.A. local hall?

(611) A. I wouldn't be sure about that.

* * * *

(657) RALPH A. MASSEY

(677) A. Well, I think so, but I wouldn't swear to it.

Q. All right.

TRIAL EXAMINER:

Any further questions before we go off the record and get these—

MR. DOWD:

I would like to ask one.

TRIAL EXAMINER: All right.

(677) CROSS EXAMINATION

Q. (By Mr. Dowdy) Mr. Massey, the Avenue N. Corporation has no dealings with the Galveston Maritime Association, the Houston Maritime Association or the Master Stevedores Association of Texas, do they, sir?

A. To my knowledge they never knew it existed. It was none of their business.

TRIAL EXAMINER:

You mean by that as far as you know the concerns Mr. Dowd mentioned had no idea Avenue N existed, is that right?

THE WITNESS:

That's right.

* * * *

(682) LOUIS W. HOMBURG

* * * *

(682) a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER:

Sit down and give us your full name, and spell your last name, please, sir.

THE WITNESS:

Louis W. Homburg—H-om-b-u-r-g

DIRECT EXAMINATION

Q. (By Mr. Whittaker) Where do you live Mr. Homburg?

A. 3831 North MacGregor Way, Houston 4, Texas.

Q. By whom are you employed?

A. Strachan Shipping Company, S-t-r-a-c-h-a-n.

Q. In what capacity?

A. Local manager.

Q. That's the same Strachan Shipping Company that is here as one of the Respondents?

A. Yes, sir.

Q. Do you hold a position in the Houston Maritime Association?

A. Yes, sir.

Q. What position is that?

A. President.

Q. How long have you been president?

A. I have just finished three years, which would put it back to March '53, I think.

(683) Q. Prior to becoming president, did you hold any other office in the Association?

A. No, sir.

Q. Does the Association have a printed set of By-Laws, Constitution?

A. No, sir.

Q. Is it unincorporated?

A. No, sir.

Q. Is it incorporated?

A. Yes, sir.

Q. Do you have the Charter?

A. The secretary has it.

Q. Could you state what the general purposes for which it is incorporated for?

A. It's a trade association to assist the shipping industry in mutual endeavors.

Q. Here in the Port of Houston?

A. It's not always confined to the Port of Houston. It's principally in the Port of Houston, but it would not necessarily be so.

Q. How far does it extend? Does it go as far as Lake Charles?

A. Yes, sir.

Q. Does it go any further than Lake Charles?

A. Some phases of it does.

(648) Q. Does it go any farther than Lake Charles?

A. Your question is too general. It could extend all over the United States or the world, for that matter, if there was some thing of interest we thought we might handle together collectively.

Q. Do you have any particular committee that could be described as the Labor Committee or Negotiating Committee?

A. Yes, sir.

Q. What is the name of it?

A. Labor Committee.

Q. And who is on this Labor Committee?

A. At the present time it's myself and Mr. Ashley W. Lott.

Q. And how long have you been on the Labor Committee?

A. Since 1949.

Q. How long has Mr. Lott been on the Labor Committee?

A. I don't know exactly. I would say approximately the same time as I have.

Q. Did you help to negotiate what is here by way of General Counsel's Exhibit 10-A, a contract effective October 1, 1953 terminating September 30, 1955?

A. I did.

Q. How does one become a member of the Association?

A. By election of the members.

Q. And are there any dues or other annual payments?

A. From the members, no.

(685) Q. Does the Association have any expenses?

A. Yes, sir.

Q. How are they paid?

A. By assessments on the cargo listed by vessels handled by the members of the Association.

Q. It's prorated according to the amount of business the member does, is that it?

A. It results in that, end result, by the fact that it's measured by the tons of cargo listed.

Q. Is it your position as president and on the Labor Committee, do you get any pay in that position?

A. No, sir.

Q. Your services are voluntary?

A. I suppose you could describe them as that way.

Q. Now, when you negotiated this contract back in October 1, 1953, what assurance did you have that any member of the Association would live up to it?

A. What do you mean by "assurance"?

Q. Well, how did you know that the member companies were going to live up to this contract?

A. (No response.)

Q. What was your authority, in other words?

A. Well, I was appointed as a member of the Labor Committee, and when we negotiated the contracts we feel

those people who have appointed us will live up (686) to them. Assurance is so broad that I think you would have to explain what you mean by assurance. Do you mean some monetary guarantee or anything?

Q. Well, did you have anything in writing delegating authority for you to negotiate a binding contract, binding upon the members?

A. We have it in the records of the minutes of the Association meetings.

Q. Is that a limited delegation of authority or is it general?

A. It's general to the extent that your purpose is to negotiate a contract.

Q. And after the contract is negotiated, does the authority expire?

A. Not necessarily.

Q. Do you handle grievances between contracts?

A. Yes, sir.

Q. Are those always brought up by one of the locals of the I.L.A.?

A. Sir?

Q. I say are those brought up by the locals of the I.L.A.?

A. Some of them are.

Q. Are some of the grievances brought up by the company?

A. Yes, sir.

Q. When a company brings up a grievance, describe how you go about handling that.

(687) A. Well, first we have to decide whether or not, according to our interpretation of the contract, which party is correct.

Assuming that we feel that the local may be correct, why then we tell the member that they are incorrect and

the local is correct, and suggest that they proceed to work with what we consider to be the proper terms of the contract.

Assuming it's an opposite situation, our first approach would be to go to the president of the local or the business agent and tell him to straighten the matter out at the point, and we might even go to the president of the district of the I.L.A.

Q. Do you arbitrate these matters or do you just try to work them out among yourselves?

A. There are provisions for arbitrations, but I don't recall an arbitration under the particular contract you have shown me.

Q. Well, like in this recent contract that was negotiated, in which wage increases were pretty substantial, did you have initial authority to agree to that amount or did you have to go back some place to get additional authority?

A. We went back and got authority.

Q. Who did you go back to?

A. We go back to the membership in a full meeting.

Q. Full meeting. And those are where the records you referred to before that is where they are made as to what authority you have to negotiate?

(688) A. No, sir. The record I referred to before was the record of our appointment to the Labor Committee, and that was the question you asked me.

Q. Yes, sir.

Does the Houston Maritime Association handle any other matters with Local 1351 than what you have told us about?

A. I believe that it's a correct summation of our relationship to state that we handle principally labor matters with them, or that is, we handle their contract. I do not know of anything else that we might deal with them on.

MR. WHITTAKER:

No further questions.

MR. EIKEL:

No questions.

MR. CRYSTAL:

No questions.

TRIAL EXAMINER:

I gather insofar as Houston Maritime Association and Local 1351 is concerned that the Houston Maritime Association negotiates the contract and interprets it insofar as the members of the Houston Maritime Association is concerned; is that correct?

THE WITNESS:

Are you asking me that question?

TRIAL EXAMINER:

Yes, sir.

THE WITNESS:

No, sir.

TRIAL EXAMINER:

Wherein is it wrong?

THE WITNESS:

The latter part of it, where you state we interpret it so far as the members are concerned. We endeavor to interpret it the way we originally wrote it.

(689) TRIAL EXAMINER:

What I meant there is where a dispute concerning an interpretation arises between the union and the employers, it's the Houston Maritime that presents the employer's side of the dispute; is that correct?

THE WITNESS:

That statement is correct.

TRIAL EXAMINER:

All right. Any further questions, gentlemen?

MR. EIKEL:

No, sir.

MR. WHITTAKER:

Thank you.

TRIAL EXAMINER:

You are excused.

(Witness excused).

(909)

RALPH E. SCALF

* * * *

(909) Q. In what capacity?

A. As Chief Clerk.

Q. Who is your immediate superior?

A. I would say Mr. Patton, R. L. Patton is my immediate superior.

Q. What is his title?

A. Bill of lading clerk or assistant office manager.

Q. How long have you been chief clerk.

* * * *

(1061) CLIFTON BOYD MORROW, Recalled

* * * *

(1062) Q. (By Mr. Crystal) Mr. Morrow, did you ever require any employer to select supervisory personnel from the membership of 1351?

A. I don't understand that question exactly.

Q. Did you ever require an employer or insist that an employer hire a supervisory man from 1351, or was the employer free to hire who he wanted?

A. The employer was free to hire anyone he wanted to that was available for work.

Q. Did you ever insist on the employer hiring any particular person?

A. No.

Q. Now, after a man was hired, say, as a chief clerk, did you require that he keep his membership in 1351 as a condition of his employment?

A. No, sir.

Q. In other words, you had nothing to do with the hiring or firing of any of these employees, did you?

A. No.

Q. Did you ever ask any employer to fire a particular person?

A. No.

(1063) Q. Mr. Morrow, you heard Mr. Casey's testimony here yesterday or the day before, wherein he said he didn't know he thought 1351 owned Avenue N. Do you know whether 1351 owns Avenue N or not?

A. Avenue N is a corporation.

Q. And it's not owned by anyone, is it?

A. No, sir.

Q. Is Avenue N, has Avenue N been dissolved so far as you know?

A. No, sir.

Q. Have they surrendered their charter to the state of Texas so far as you know?

A. No, sir.

Q. 1351 is still paying rent to Avenue N, isn't it?

A. Yes, sir.

Q. Mr. Morrow, now look at page—at paragraph five, page eleven—

I hand you what has been received in evidence as General Counsel's Exhibit 10-A and ask you to read that paragraph (b) over very carefully, and I want to ask you a question about it.

Do you still operate under the provisions of that paragraph, pay any attention to it, in other words?

A. We send all the men out by name regardless of what they pay them.

* * * *

(1080) HERRICK VESTAL, Recalled

* * * *

(1087) Q. Now, Mr. Vestal, does 1351 have any say as to who the employer calls for or asks for?

A. As to who the employer calls for or asks for?

Q. Yes, sir.

A. No. The employer or whoever represents the employer follows the procedure of calling the business agent, whoever it may be at the time, and asking what men are available, and the names are read off and he selects the ones that he thinks the most competent to do the work he desires.

Q. These men that are calling, the chief clerks, by whom are they employed?

A. Well, they are employed—

(1088) Q. By the companies?

A. By the companies.

Q. The union doesn't have anything to do with them?

A. No, sir.

Q. Does the union have any control over their work, the work of these chief clerks?

A. Well, just how do you mean that?

Q. Well, does the union tell those men what to do and how to perform their work?

A. No. That is by the superintendent, if he is on the dock, or—

Q. That is the employer's job, isn't it?

A. Right.

Q. Now, you have monthly employees and also 40-hour employees, is that right?

A. Yes, sir.

Q. Who determines when a man is to be a monthly employee or 40-hour employee, the company or the union?

A. Well, the company would be the one to decide it.

Q. Now, who sets the wages of the monthly man? Is that done by contract?

A. By contract. That would be your—well, it's a set scale.

Q. That is by contract?

A. That's right.

* * * *

(1155) THOMAS J. MARTIN, SR.

* * * *

(1158) Q. Do you know which men are members and which men are non-members when he reads the names?

A. Yes, sir.

Q. And when you pick the men you want do you pay any attention to whether they are union or non-union?

A. No, sir.

(1159) Q. You pick the man you think can give you the best job?

A. Can do the best job.

Q. Now, during all this period of time when you were a non-member and you didn't have a 40-hour guarantee, weren't there many days when you were called on to go out for work and members were left behind?

A. Yes, sir. They called me by name.

MR. WHITTAKER: I object. He is leading his own witness, Mr. Examiner.

TRIAL EXAMINER: I'd like to know how the witness would know that.

THE WITNESS: Would know what, sir? Oh, pardon me.

Q. (By Mr. Crystal) Days you went out and members were left behind, how would you know that?

A. Well, whoever would employ me would say, "Well, I called you." Or they might call me at home and say, "Are you going to be busy tomorrow or—"

Q. I don't think you understood my question.

You were called out of the hall by name to go to work.

A. Yes, sir.

Q. Now, how would you know whether there were some members that didn't get called that day?

A. I would be up at the hall and see the list. We know who is working and not working.

TRIAL EXAMINER: I think you misunderstood me too. He said he was usually called for by name. How would (1160) he know the employer said to Mr. Morrow, "Send me Mr. Martin"?

MR. CRYSTAL: I didn't ask him that question. I asked him if it wasn't a fact on days he was called members were left behind and didn't get called?

TRIAL EXAMINER: Excuse me. I didn't understand the question.

* * * *

(1162) Q. If a man comes down to work in a hatch checking one thing, you change him to working somewhere else doing something else.

A. Yes, sir. On the three men I have hired, they do everything, such as, you know, load, check, or deliver.

Q. This man you have now, this non-union man that is working for you that you just hired this year on a 40-hour job, is his name Stroud?

A. Yes, sir.

Q. Do you know a man named Hancock?

A. I know two of them, father and son.

Q. You know the one they call "Judge," the old man?

A. Yes, sir.

Q. What has been your experience with him?

A. Well, I had him hired last week. He is a very capable man. I just hired him for a couple of days' work.

Q. He worked for many years for Lykes, didn't he?
(1163) A. I think he went to work in 1922 for Lykes.

Q. And he was working there when you worked there for a while?

A. He was still working there when I left. I think he left Lykes—

Q. He now works through the hall, is that it?

A. Yes, sir.

Q. And you say you hire him, is that because he is capable?

A. Very much so.

Q. Is he more capable at his age than a lot of other men at the same age?

MR. WHITTAKER: I object. It is just generalities, nothing specific.

TRIAL EXAMINER: Some men at his age are not capable at all.

MR. WHITTAKER: Some of them are dead.

TRIAL EXAMINER: Go ahead.

Q. (By Mr. Crystal) What did you say, Mr. Martin?

A. Oh, yes, he is very capable, a very good man.

Q. Was Hancock, is he a timekeeper or do you know?

A. We don't use timekeepers. He is capable of doing anything, in my opinion.

Q. He has had many years of experience, hasn't he?

A. Yes, sir.

Q. Tell me, was he available when you hired Stroud?

(1164) A. I don't know. I didn't give, to be honest with you, I didn't give Mr. Hancock—I didn't think about him, in fact; I don't know whether he was still with Lykes at the time. It happened about the same time, but I wanted Stroud. I went over and found out if he wanted to work for me, like I have in the past when I was with Lykes Brothers.

CROSS EXAMINATION

Q. (By Mr. Whittaker) How old a man is Mr. Stroud?

A. Approximately 25 or 26.

Q. Is he an outbound clerk?

A. Well, I am teaching him to be an outbound clerk.

Q. Is he an inbound clerk?

A. He can do the work, yes, sir.

Q. In six months he can do a completely satisfactory job of inbound clerk?

A. He has worked for the Port Commission receiving over there. He knows something about it, and I am teaching him. In fact, nearly all the clerks on the waterfront have worked for me at one time or another. I have turned out some good men.

Q. Is this man a finished inbound clerk?

A.. No, I don't think you would say a man is finished. He does what he is told. I believe it takes about five (1165) years or so for a man to really learn what he is doing, just like a lawyer or anyone else. A lawyer, I

don't think he knows too much at the beginning, just like a clerk.

Q. How long would it take to make him a good out-bound clerk?

A. That is hard to say. I think it takes any man, maybe people don't agree, at least five years to be what you call a No. 1 clerk.

Q. Now, why did you wait until July 1955 to join the union?

A. Well, before I was always strictly a company man, and I was in the position where they don't hire a union man to be in that position. That's Lykes' policy.

Q. What kind of job did you hold as a company man?

A. Wharf superintendent.

Q. Did John Moran take your place with Lykes?

A. Yes, sir.

Q. At that time then you didn't pay any percentage to Local 1351, is that correct?

A. When I was working for Lykes, no, sir.

Q. When did you start paying percentage to Local 1351?

A. I think I started working there about June or July of '53.

Q. And up to that time you had been wharf superintendent for Lykes Brothers?

A. Yes, sir.

* * * *

(1169)

R. L. LAIRD

* * * *

(1170) Q. Now, you are a member of 1351?

A. No, sir.

Q. You are not a member?

A. No, sir.

Q. Now, during the time that you worked out of the hall did you have any trouble getting all the employment you could take care of?

A. No, sir.

Q. And during the time that you worked out of the hall, Mr. Laird, were there occasions when you would be sent out to work and members would not be sent out to work?

A. Well, I suppose there was. Of course, I didn't know who all was working, but I knew a lot of times I was working when some members were not working; but why they were not working, I don't know.

Q. All right.

Now, how long have you been down on the waterfront?

A. Since January 1, '48.

Q. Mr. Laird, what do you do for Tidemann and Dalton now?

* * * *

(1171) Q. In other words, he calls the names off and you select the men you want?

A. Yes, sir.

Q. Now in selecting the men you want, do you know who is union and who is non-union?

A. No, sir.

Q. You just select the men you want without knowing even?

A. I select the men from the past experience that I know that he can do the class of work I want him to do.

Q. And you don't even know who is union and non-union when he calls the names off to you?

A. Not in all cases, no, sir. Of course, some of the men I know are union when he calls them off to me.

(1177) LAWRENCE B. HANCOCK

* * * *

(1178) DIRECT EXAMINATION

Q. (By Mr. Crystal) Mr. Hancock, are you a member of 1351?

A. Yes, sir.

Q. How long have you been a member of 1351?

A. Since 1954.

Q. How long have you been working down on the docks?

A. In Houston?

Q. Yes, sir.

A. About seventeen years.

Q. Did you work on the docks some other place before you came to Houston?

A. Galveston.

Q. How long did you work on the docks at Galveston?

A. About thirty-three years.

Q. In other words, you have been working along docks between Houston and Galveston the last fifty years?

A. That's right.

Q. Any members of your family work on the docks?

A. I've got a son, sir.

Q. How long has he been working on the docks?

A. Since 1946.

Q. That's eleven years?

A. Yes, sir.

Q. And does he work down here, or at Houston or Galveston?

A. He works at Houston.

(1179) Q. Are you working now?

A. Yes, sir.

Q. Do you work through the hall or do you have a regular job?

A. No, sir; I work through the hall.

Q. How long have you been working through the hall?

A. Since the first day of February.

Q. What did you do before that time?

A. I was on Lykes' payroll.

Q. How old a man are you?

A. Sixty-eight.

Q. Are you capable of doing clerk's work?

A. Yes, sir.

Q. Are you capable of checking?

A. Yes, sir.

Q. Are you capable of keeping time?

A. Yes, sir.

Q. How long did you say you worked for Lykes Brothers before February of this year?

A. Thirty-two years.

Q. And during that 32 years you did all this work, checker's work, clerk's work, and timekeeper's work?

A. Yes, sir.

Q. And during this period of time up until February of this year, were you a monthly man, salaried man or—
(1180) A. Monthly man.

Q. How long had you been a monthly man?

A. Since December—January 1, 1925.

Q. In other words, you were a monthly man for Lykes before you ever became a member of 1351?

A. Yes, sir.

Q. And you worked there as a monthly man for many years before becoming a member of 1351?

A. Yes, sir.

Q. Now, since February of this year when you left Lykes Brothers, you had been working through 1351?

A. Yes, sir.

Q. Have you had trouble getting as much work as you could do?

A. No, sir.

* * * *

(1180) Q. What about your son, is he a member or non-member?

A. He is a member of the union for the last three years.

(1181) Q. Before the three years he was a non-member?

A. Yes, sir.

* * * *

Q. (By Mr. Crystal) When you left Lykes after being with them 32 years, did they put you on any kind of a pension?

A. No, sir. I have an annuity that they paid a portion of.

Q. They didn't put you on any pension, did they?

A. No, sir.

Q. Did they tell you why they were laying you off?

(1182) A. They wanted younger blood in the firm.

Q. I see.

* * * *

(1195) MR. EIKEL: On behalf of the respondent companies they move that the Complaint in whole and in part be dismissed because there is no legally sufficient proof of any participation on their part on any, in any discriminatory procedures against any individuals concerned or individuals not named in the Complaints or Charges filed.

In addition to that, they join in the motion for dismissal, on behalf of the defendant, respondent associations, particularly the Houston Maritime Association, Master

Stevedores Association of Texas, for the reason that there is no evidence of any participation by the associations or the respondent employers or associations to any of the hiring hall practices, their only connection with this proceeding being they entered into contracts with these other respondents, and under the law they had no alternative but to contract with these persons.

(1196) The times relative to the complaints are of such recent date that the historical basis for contracts has not appeared of record; but there can be no doubt as a matter of law that the employers were compelled to enter into contracts with the respondent unions and as consequence the only evidence which can be brought against the respondents, both individual companies and the associations, lies in the terms of the contract; and these respondents submit that the complaint should be dismissed as to them because the contract per se is not illegal and has not been shown to be such, and the illegal clause, if it be such, with reference to preferences being accorded to any particular individuals in hiring practices, has been stricken in response to the criticism of the Board and in conformity with the settlement agreement entered into prior to the formulation of the complaints; and there has been no proof that the contract provision with respect to preferences being accorded has been reinstated or changed or in any way at the present time does not comply fully with the law as a matter of law.

And therefore, the record is devoid of any evidence of any illegality in hiring or discriminatory practices as far as these companies and respondents are concerned, and associations, except as so far as they are parties to a contract by which law they are compelled to enter.

There is no evidence of any knowledge on their part of any illegal discriminatory practices in the (1197) operations of the hiring hall and no evidence of any participation in any acts of hiring discriminatory in character, and no evidence of any acts engaged in by any of these respondents, respondent companies or associations, and as a consequence the complaint should be dismissed in whole as to these particular companies.

By way of further motion, these respondents urge that in the event that the discriminatory practices engaged in here be found to be discriminatory or, to put it in other language, if any practices be found to be discriminatory in character or by virtue of contract, that they are entitled to notice of such finding of discriminatory practices and to an opportunity to correct any such practices brought to their attention before any award of any character be made against them.

* * * *

GENERAL COUNSEL'S EXHIBIT NO. 10-A

**CLERKS AND CHECKERS AGREEMENT
WITH GALVESTON-HOUSTON MARITIME
ASSOCIATIONS, INC.**

**Effective October 1, 1953
Terminating September 30, 1955**

THIS AGREEMENT, made and entered into by and between HOUSTON-GALVESTON MARITIME ASSOCIATION & MASTER STEVEDORES Parties of the First Part, and the Undersigned Locals of the Clerks and Checkers of the International Longshoremen's Association, Parties of the Second Part, WITNESSETH:

1. SCOPE OF WORK

- (A) The scope of work involved in this contract shall cover all Clerks, Timekeepers, Checkers or Tallymen employed in checking, receiving or delivery of freight, or (Ship Stores when Clerk or Checker is used) from vessel to wharf or wharf to vessel, and such Clerks, Timekeepers, Checkers and Tallymen as are employed in making delivery to and from drays and/or other conveyances, including railroad cars or transport companies.
- (B) The members of the Parties of the First Part shall have the right to employ members of the Party of the Second Part, calling them by name to be used as regular salaried Wharf Clerks, extra Wharf Clerks or Timekeepers as provided in Paragraph 4, Section B

and C thereof: It being distinctly understood the employer has the right during the life of this contract to call regular monthly men, extra wharf clerks and timekeepers by name and complete discretion as to the number of regular men to be carried on monthly payroll, varying the number as they see fit with the usual proper notice of fifteen days.

- (C) It is also distinctly understood that when a Clerk, Timekeeper, Checker or Tallyman is employed or assigned for or to any particular ship or job that he will, at the discretion of the employer, remain on the assignment until it is completed. At no time shall a member of the second part be required to perform the dual function of clerking and timekeeping.

2.

Members of the Party of the Second Part shall have preference of all work pertaining to extra Checking, Timekeeping, Checking and Tallying as defined in Section 1, Paragraph A hereof. The Party of the second part shall reserve the right to rotate work among these Checkers and Tallymen.

3. WORKING DAY AND HOURS

Eight hours shall constitute a straight day's work with forty hour week, 8:00 A.M., to noon, and 1:00 P.M. to 5:00 P.M. Mondays through Fridays. When required, men shall work on Saturdays Sundays, Holidays or night, at the overtime basis of time and one-half.

4. PAY SCALE

- (A) Checkers and Tallymen shall receive Two Dollars and Twenty-five cents (\$2.25) per hour straight time

and overtime of Three Dollars and Thirty-seven and one-half Cents (\$3.375) per hour.

- (B) Timekeepers and Wharf Clerks shall receive Two Dollars and Thirty-six Cents (\$2.36) per hour straight time, overtime rate for Timekeepers, salaried and extra wharf clerks Three Dollars and Fifty-four cents (\$3.54) per hour.
- (C) Minimum monthly pay of regular wharf clerks shall be Three Hundred and Seventy Seven Dollars and Eighty-seven cents per month basis forty hours per week, 8:00 A.M. to 5:00 P.M. Monday through Friday. Such regular clerks employed on this basis for period of one year shall receive two weeks vacation with pay; time of vacation to be designated by the employer.

DIFFERENTIALS: A differential payment of Ten cents (.10) per man hour will be paid to Checkers, Tallymen, Timekeepers and Extra Wharf Clerks in lieu of pension, welfare and vacations.

A differential of Seventeen Dollars and Eight Cents (\$17.08) per month will be paid to regular Wharf Clerks in lieu of pension and welfare fund.

Overtime will apply on these differential payments when work is done during overtime hours.

- (D) When clerks, timekeepers, checkers and tallymen are ordered for work at any A.M. starting time, they will be paid until noon. They shall receive a minimum of four hours. If ordered or returned for work in the afternoon, they shall receive a minimum of

four hours pay. If ordered or returned for 7 P. M., they shall receive a minimum of four hours pay.

- (E) Inasmuch as clerks and timekeepers days work is not necessarily governed by the time of loading or discharging gangs are released while a vessel is working, they shall be paid for all time they are required to work after gangs are knocked off.

5. OVERTIME

All work performed on Saturdays, Sundays, Holidays or after 5:00 P. M. or before 8:00 A. M. on Mondays through Fridays is to be considered overtime and paid for at the overtime rate of time and one-half the straight time scale, unless otherwise set forth herein.

6. MEAL HOURS

Meal hours shall be as follows, to be paid double time, but minimum of half hour to be paid. Double time to continue until men are relieved.

From 6:00 A. M. to 7:00 A. M. Breakfast

From 12:00 Noon to 1:00 P. M. Dinner

From 6:00 P. M. to 7:00 P. M. Supper

From 12 Midnight to 1:00 A. M. Midnight Lunch

Saturdays: Supper time from 5:00 P. M. to 7:00 P. M.

7. HOLIDAYS

Armistice Day, Thanksgiving Day, Christmas, New Years Day, Washington's Birthday, Texas Independence Day, June 19th, Fourth of July, Labor Day, Decoration Day (May 30th). No work shall be performed on Labor

Day or Christmas Day except in cases of fire or where property is in danger.

8-A EMPLOYER'S NOTIFICATION

Timekeepers, extra clerks and tallymen to be ordered by 7:00 P.M. for 8:00 A.M. start the following morning. Two hours notice to be given for ordering men at other agreed starting times. Men required to work on Sundays and Holidays must be ordered by 7 P.M. previous evening.

8-B PAYMENT IN LIEU OF TRANSPORTATION TO EMPLOYEES:

For their inconvenience, those persons reporting for work at the vessel will be paid the following:

- (A) Where men who live in Galveston are called for work in Texas City, they will be paid an amount equal to two hours pay of an extra wharf clerk for transportation, for each trip as ordered.
- (8) On the Houston Ship Channel, from and including the Katy Terminal on the North Side, from and including Sinclair Refinery on the South Side—\$1.50 per person furnished by the Houston Locals for each trip as ordered.

Such payment will also be made should men be ordered to return to work at 7 P.M. but no transportation allowance will be made for Lunch hour.

It is clearly understood that these men are not employed before going to work at the vessel or after stopping work at the vessel and that this money is not pay.

9. INCOMPETENCY AND INTOXICANTS

The Party of the Second Part will not uphold incompetency nor will any member of the Party of the Second Part be allowed to work while under the influence of intoxicants, and further no members of the Party of the Second Part shall bring any intoxicants upon the property of or the piers used by the Party of the First Part.

10.

Double time to be paid for damaged cargo as follows: For cargo on vessels in distress as a result of which fumes, smoke, water, oil or obnoxious odors are present. The double time shall apply to clerks, timekeepers or checkers of such damaged cargo handled or checked to place of rest. The double time rate shall apply on such cargo handled or checked to place on dock and also on final delivery of such cargo from dock to carrier.

This clause applies to clerks, checkers or timekeepers actually used on such cargo.

Double time to be paid on explosives including ammonium nitrate.

11. DISPUTES

- (A) NO STOPPAGE OF WORK OR LOCKOUTS. It is understood and agreed that during the life of this contract there shall be no stoppage of work or lockout under any circumstances whatsoever. It is further understood that in the case of disputes as to the interpretation of this contract or any work-

ing rules agreed to in connection with this contract, there shall be no cessation of work.

- (B) Disputes shall be referred to a Grievance Committee composed of two representatives of the Shipping and Stevedoring interests and two representatives of the Organization. Upon failure of this grievance committee of four to settle the dispute, it shall be referred to arbitration as follows:
- (C) Two representatives will be appointed by the undersigned Locals of the Clerks and Checkers of the International Longshoremen's Association and two representatives will be appointed by the Galveston-Houston Maritime Associations within one week after notification by the grievance committee to the District Office of the ILA's and to the Maritime Associations of its failure to agree and arbitration is desired.

The party desiring such arbitration shall then present, in writing to the four arbitrators named the question or questions to be arbitrated, with copy to the other party alleged to be at fault. Within one week after such notification the other party shall give in like manner similar written notice in defense of its position. It is understood that neither party will introduce any additional question not relevant to the matter to be arbitrated.

The four arbitrators appointed as above provided shall then select a fifth arbitrator, who shall be impartial, disinterested and not in any way connected with either of the parties. In the event that the four arbitrators shall fail within five calendar days to select the fifth arbitrator, then upon request of either party, a District Judge of the United

States District Court of the district in which the dispute occurred, selected by the International Longshoremen's Association, shall be requested to nominate one principal and two alternates, all of whom shall be impartial persons, qualified to act as arbitrators.

The Maritime Association representatives and the ILA representatives shall each have the choice of rejecting the names of one of these three nominees and the remaining, or the third, shall be selected as the fifth arbitrator. In the event the same nominee shall be rejected by both parties, leaving more than one nominee on the list, the one that heads the top of the list as submitted by the District Judge shall act as the fifth arbitrator.

The expense of the fifth arbitrator, together with any other arbitration cost, shall be borne equally by the respective parties.

The decision of a majority of the arbitration committee shall be final and binding upon the parties thereto.

The arbitrator's decision shall be reduced to writing and submitted to both parties.

12. LIFE OF AGREEMENT

This agreement will become effective October 1, 1953, and remain operative until midnight September 30, 1955.

It is mutually agreed that either party may be privileged to open this contract for the negotiations of wages only; however, either party desiring to open the contract for the negotiation of wages shall give a 60 days written notice

before September 30, 1954, to the other party, otherwise contract automatically remains unchanged.

President, Local No. 1665

Secretary, Local No. 1665

President, Local 1351

Secretary, Local 1351

SOUTH ATLANTIC & GULF COAST
DISTRICT I.L.A.

President

Secretary

GALVESTON MARITIME ASSOCIATION, INC.

President

HOUSTON MARITIME ASSOCIATION, INC.

President

MASTER STEVEDORES ASSN. OF TEXAS

President